

No. 11703

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United States  
Circuit Court of Appeals

For the Ninth Circuit.

see vol. 2490

GEORGE B. CAREY,

Appellant,

vs.

HILO FINANCE & THRIFT CO., LTD.,  
a corporation,

Appellee.

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Transcript of Record

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UPON APPEAL FROM THE SUPREME COURT OF  
THE TERRITORY OF HAWAII

FILED

NOV 4 - 1947

PAUL P. O'BRIEN,

CLERK



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Circuit Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

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Attorneys for Respondent-Appellee.

BRAHAN HOUSTON, ESQ.,

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Honolulu, T. H.

Attorney for Petitioner-Appellant.

In the Circuit Court of the Third Judicial Circuit,  
Territory of Hawaii

L. No. 2316

Action in Assumpsit with Garnishment and  
Attachment in Aid

HILO FINANCE AND THRIFT COMPANY,  
LIMITED,

Plaintiff,

vs.

GEORGE B. CAREY,

Defendant,

BANK OF HAWAII and BISHOP NATION-  
AL BANK OF HAWAII AT HONOLULU,  
Garnishees.

#### PLAINTIFF'S AMENDED DECLARATION

To the Honorable Ray J. O'Brien, Judge of the  
Circuit Court of the Third Judicial Circuit:

Comes now Hilo Finance and Thrift Company, Limited, a Hawaiian corporation, named herein as Plaintiff, and complaining against George B. Carey, a resident of Honolulu, City and County of Honolulu, Territory of Hawaii, named herein as Defendant, and for cause of complaint says:

#### First Cause of Action

##### Count 1.

That heretofore, to wit, on or about the 31st day



of August, A. D. 1937, the said defendant, for and in consideration of the sum of \$2,330.00 to be advanced by the plaintiff at its office in Hilo, County and Island of Hawaii, promised and undertook to repay to the plaintiff at its said office in Hilo, the said sum of \$2,330.00 in equal monthly installments of \$155.32 each until the whole amount of said sum should be fully paid, except that the last installment was to include any fractional portion of an installment remaining unpaid; that it was understood and agreed by the plaintiff and defendant that said monthly installments would be due and payable on the same day in each month that the advance was made, following the advance by the plaintiff; that defendant, in consideration of said advance made, executed and delivered to the plaintiff his promissory note dated August 31st, 1937, a copy of which is hereto attached, marked Exhibit "A" and made a part hereof; that said advance was made by the plaintiff on September 1, 1937; that notwithstanding his several promises and undertakings contained in said note, as modified by the oral contract of plaintiff and defendant, said defendant has not paid any part of said advance, excepting the sum of \$2,174.48.

That in accordance with the provisions of said note, as modified by the oral contract of plaintiff and defendant, the principal sum of \$155.52 became due and payable on the 1st day of December, 1938, and plaintiff is entitled to the sum of \$155.52, together with interest thereon at the legal rate from

and after December 1, 1938, which said sum the defendant has neglected and refused to pay and still neglects and refuses to pay;

That said defendant, by his said note, further agreed to pay, as and for an attorney's fee if the said note is placed in the hands of an attorney, 10% of the unpaid amount of said note; that said note has been placed in the hands of an attorney for collection.

#### Count 2.

That heretofore, to wit, on or about the 1st day of December, 1938, the defendant was and became indebted to the plaintiff in the sum of \$155.52 for money theretofore had and received by the defendant from the plaintiff, and being so indebted, in consideration thereof, the defendant undertook and faithfully promised to pay said plaintiff the last mentioned sum of money when he should be thereto requested; that although repeated demand has been made on defendant for said sum said defendant has failed, neglected and refused and still fails, neglects and refuses to pay the said sum or any part thereof to the damage of the plaintiff in the said sum of \$155.52.

#### Second Cause of Action

#### Count 1.

That heretofore, to wit, on or about the 28th day of September, A. D. 1937, the said defendant for and in consideration of the sum of \$2,330.00 to be advanced by the plaintiff at its office in said Hilo, County and Island of Hawaii, agreed, promised and

undertook to repay to the plaintiff, at its office in said Hilo, the said sum of \$2,330.00, in equal monthly installments of \$155.32 each until the whole amount of said sum should be fully paid, except that the last installment was to include any fractional portion of an installment remaining unpaid; that it was understood and agreed by the plaintiff and defendant that said monthly installments would be due and payable on the same day in each month that the advance was made, following the advance by the plaintiff; that defendant, in consideration of said advance made, executed and delivered to the plaintiff his promissory note dated Sept. 28, 1937, a copy of which is hereto attached, marked Exhibit "B" and made a part hereof; that said advance was made by the plaintiff on October 1, 1937; that notwithstanding his several promises and undertakings contained in said note, as modified by the oral contract of plaintiff and defendant, said defendant has not paid any part of said advance, excepting the sum of \$2,019.16;

That the defendant has defaulted in the payment of his said undertaking, contained in said note, as modified by said oral contract, and by reason of said default there became due and payable to the plaintiff the unpaid balance of said advance, to wit, \$310.84, together with interest at the legal rate on \$155.32 thereof from December 1, 1938, and on \$155.52 thereof from January 1, 1939, which said sum the defendant has neglected and refused to pay and still neglects and refuses to pay;

That said defendant, by his said note, further agreed to pay as and for an attorney's fee if the said note is placed in the hands of an attorney, 10% of the unpaid amount of said note; that said note has been placed in the hands of an attorney for collection.

#### Count 2.

That heretofore, to wit, on or about the 1st day of December, 1938, the defendant was and became indebted to the plaintiff in the sum of \$310.84 for money theretofore had and received by the defendant from the plaintiff, and being so indebted, in consideration thereof, the defendant undertook and faithfully promised to pay said plaintiff the last mentioned sum of money when he should be thereto requested; that although repeated demand has been made on defendant for said sum said defendant has failed, neglected and refused and still fails, neglects and refuses to pay the said sum or any part thereof to the damage of the plaintiff in the said sum of \$310.84.

#### Third Cause of Action

#### Count 1.

That heretofore, to wit, on or about the 29th day of October, A. D. 1937, the said defendant, for and in consideration of the sum of \$2,330.00 to be advanced by the plaintiff at its office in said Hilo, County and Island of Hawaii, agreed, promised and undertook to repay to the plaintiff, at its office in said Hilo, the said sum of \$2,330.00 in equal monthly installments of \$155.32 each until the whole amount

of said sum should be fully paid, except that the last installment was to include any fractional portion of an installment remaining unpaid; that it was understood and agreed by the plaintiff and defendant that said monthly installments would be due and payable on the same day in each month that the advance was made, following the advance by the plaintiff; that defendant, in consideration of said advance made, executed and delivered to the plaintiff his promissory note dated the 29th day of October, A. D. 1937, a copy of which is hereto attached, marked Exhibit "C" and made a part hereof; that said advance was made by the plaintiff on Nov. 2, 1937; that notwithstanding his several promises and undertakings contained in said note, as modified by the oral contract of plaintiff and defendant, said defendant has not paid any part of said advance, excepting the sum of \$1,863.84;

That the defendant has defaulted in the payment of his said undertaking, contained in said note, as modified by said oral contract, and by reason of said default there became due and payable to the plaintiff the unpaid balance of said advance, to wit, \$466.16, together with interest at the legal rate on \$155.32 thereof from December 2, 1938, on \$155.32 thereof from January 2, 1939, and on \$155.52 thereof from February 2, 1939, which said sum the defendant has neglected and refused to pay and still neglects and refuses to pay;

That said defendant, by his said note, further agreed to pay as and for an attorney's fee if the



said note is placed in the hands of an attorney, 10% of the unpaid amount of said note; that said note has been placed in the hands of an attorney for collection.

#### Count 2.

That heretofore, to wit, on or about the 2nd day of December, 1938, the defendant was and became indebted to the plaintiff in the sum of \$466.16 for money theretofore had and received by the defendant from the plaintiff, and being so indebted, in consideration thereof, the defendant undertook and faithfully promised to pay said plaintiff the last mentioned sum of money when he should be thereto requested; that although repeated demand has been made on defendant for said sum said defendant has failed, neglected and refused and still fails, neglects and refuses to pay the said sum or any part thereof to the damage of the plaintiff in the said sum of \$466.16.

#### Fourth Cause of Action

#### Count 1.

That heretofore, to wit, on or about the 17th day of November, A. D. 1937, the said defendant, for and in consideration of the sum of \$2,330.00 to be advanced by the plaintiff at its office in Hilo, County and Island of Hawaii, agreed, promised and undertook to repay to the plaintiff, at its office in said Hilo, the said sum of \$2,330.00 in equal monthly installments of \$155.32 each until the whole amount of said sum should be fully paid, except that the

last installment was to include any fractional portion of an installment remaining unpaid; that it was understood and agreed by the plaintiff and defendant that said monthly installments would be due and payable on the same day in each month that the advance was made, following the advance by the plaintiff; that defendant, in consideration of said advance made, executed and delivered to the plaintiff his promissory note dated the 17th day of Nov., 1937, a copy of which is hereto attached, marked Exhibit "D" and made a part hereof; that said advance was made by the plaintiff on Nov. 18, 1937; that notwithstanding his several promises and undertakings contained in said note, as modified by the oral contract of plaintiff and defendant, said defendant has not paid any part of said advance, excepting the sum of \$1,708.52;

That the defendant has defaulted in the payment of his undertaking, contained in said note, as modified by said oral contract, and by reason of said default there became due and payable to the plaintiff the unpaid balance of said advance, to wit, \$621.48, together with interest at the legal rate on \$155.32 thereof from Nov. 18, 1938, on \$155.32 thereof from Dec. 18, 1938, on \$155.32 thereof from Jan. 18, 1940, and on \$155.52 thereof from February 19, 1940, which said sum the defendant has neglected and refused to pay and still neglects and refuses to pay;

That the said defendant, by his said note, further agreed to pay as and for an attorney's fee if the said note is placed in the hands of an attorney,

10% of the unpaid amount of said note; that said note has been placed in the hands of an attorney for collection.

Count 2.

That heretofore, to wit, on or about the 18th day of Nov., 1938, the defendant was and became indebted to the plaintiff in the sum of \$621.48 for money theretofore had and received by the defendant from the plaintiff, and being so indebted, in consideration thereof, the defendant undertook and faithfully promised to pay said plaintiff the last mentioned sum of money when he should be thereto requested; that although repeated demand has been made on defendant for said sum said defendant has failed, neglected and refused and still fails, neglects and refuses to pay the said sum or any part thereof to the damage of the plaintiff in the said sum of \$621.48.

Fifth Cause of Action

Count 1.

That heretofore, to wit, on or about the 30th day of November, A. D. 1937, the said defendant, for and in consideration of the sum of \$2,330.00 to be advanced by the plaintiff at its office in Hilo, County and Island of Hawaii, agreed, promised and undertook to repay to the plaintiff, at its office in said Hilo, the said sum of \$2,330.00 in equal monthly installments of \$155.32 each until the whole amount of said sum should be fully paid, except that the last installment was to include any fractional portion of an installment remaining unpaid; that it



was understood and agreed by the plaintiff and defendant that said monthly installments would be due and payable on the same day in each month that the advance was made, following the advance by the plaintiff; that defendant, in consideration of said advance made, executed and delivered to the plaintiff his promissory note dated Nov. 30th, 1937, a copy of which is hereto attached, marked Exhibit "E" and made a part hereof; that said advance was made by the plaintiff on Dec. 2nd, 1937; that notwithstanding his several promises and undertakings contained in said note, as modified by the oral contract of plaintiff and defendant, said defendant has not paid any part of said advance, excepting the sum of \$1,708.52;

That the defendant has defaulted in the payment of his said undertaking, contained in said note, as modified by said oral contract, and by reason of said default there became due and payable to the plaintiff the unpaid balance of said advance, to wit, \$621.48, together with interest at the legal rate on \$155.32 thereof from Dec. 2nd, 1938, on \$155.32 thereof from Jan. 2, 1939, on \$155.32 thereof from Feb. 2nd, 1939 and on \$155.52 thereof from March 2nd, 1939, which said sum the defendant has neglected and refused to pay and still neglects and refuses to pay;

That said defendant, by his said note, further agreed to pay as and for an attorney's fee if the said note is placed in the hands of an attorney, 10% of the unpaid amount of said note; that said has been placed in the hands of an attorney for collection.

## Count 2.

That heretofore, to wit, on or about the 2nd day of Dec., 1938, the said defendant was and became indebted to the plaintiff in the sum of \$621.48 for money theretofore had and received by the defendant from the plaintiff, and being so indebted, in consideration thereof, the defendant undertook and faithfully promised to pay said plaintiff the last mentioned sum of money when he should be thereto requested; that although repeated demand has been made on defendant for said sum said defendant has failed, neglected and refused and still fails, neglects and refuses to pay the said sum or any part thereof to the damage of the plaintiff in the said sum of \$621.48.

## Sixth Cause of Action

## Count 1.

That heretofore, to wit, on or about the 31st day of December, A. D. 1937, the said defendant, for and in consideration of the sum of \$2,330.00 to be advanced by the plaintiff at its office in Hilo, County and Island of Hawaii, agreed, promised and undertook to repay to the plaintiff, at its office in said Hilo, the said sum of \$2,330.00 in equal monthly installments of \$155.32 each until the whole amount of said sum should be fully paid, except that the last installment was to include any fractional portion of an installment remaining unpaid; that it was understood and agreed by the plaintiff and defendant that

said monthly installments would be due and payable on the same day in each month that the advance was made, following the advance by the plaintiff; that defendant, in consideration of said advance made, executed and delivered to the plaintiff his promissory note dated December 31st, 1937, a copy of which is hereto attached, marked Exhibit "F" and made a part hereof; that said advance was made by the plaintiff on January 4th, 1938; that notwithstanding his several promises and undertakings contained in said note, modified by the oral contract of plaintiff and defendant, said defendant has not paid any part of said advance, excepting the sum of \$1,553.20;

That the defendant has defaulted in the payment of his said undertaking, contained in said note, as modified by said oral contract, and by reason of said default there became due and payable to the plaintiff the unpaid balance of said advance, towit, \$776.80, together with interest at the legal rate on \$155.32 thereof, from Dec. 4, 1938, on \$155.32 thereof from Jan. 4, 1939, on \$155.32 thereof from Feb. 4, 1939, on \$155.32 thereof from March 4, 1939, and on \$155.52 from April 4, 1939, which said sum the defendant has neglected and refused to pay and still neglects and refuses to pay;

That said defendant, by his said note, further agreed to pay as and for an attorney's fee if the said note is placed in the hands of an attorney, 10% of the unpaid amount of said note; that said note has been placed in the hands of an attorney for collection.

## Count 2.

That heretofore, towit, on the 4th day of Dec., 1938, the said defendant was and became indebted to the plaintiff herein in the sum of \$776.80 for money theretofore had and received by the defendant from the plaintiff, and being so indebted, in consideration thereof, the defendant undertook and faithfully promised to pay said plaintiff the last mentioned sum of money when he should be thereto requested; that although repeated demand has been made on defendant for said sum defendant has failed, neglected and refused and still fails, neglects and refuses to pay the said sum or any part thereof to the damage of the plaintiff in the said sum of \$776.80.

## Seventh Cause of Action

## Count 1.

That heretofore, towit, on or about the 31st day of January, A. D. 1938, the said defendant, for and in consideration of the sum of \$2,330.00 to be advanced by the plaintiff at its office in Hilo, County and Island of Hawaii, agreed, promised and undertook to repay to the plaintiff, at its office in said Hilo, the said sum of \$2,330.00 in equal monthly installments of \$155.32 each until the whole amount of said sum should be fully paid, except that the last installment was to include any fractional portion of an installment remaining unpaid; that it was understood and agreed by the plaintiff and defendant that said monthly installments would be due and payable on the same day in each month that the ad-

vance was made, following the advance by the plaintiff; that defendant, in consideration of said advance made, executed and delivered to the plaintiff his promissory note dated January 31, 1938, a copy of which is hereto attached, made a part hereof and marked Exhibit "G"; that said advance was made by the plaintiff on February 2, 1938; that notwithstanding his several promises and undertakings contained in said note, modified by the oral contract of plaintiff and defendant, said defendant has not paid any part of said advance, excepting the sum of \$1,397.88;

That the defendant has defaulted in the payment of his said undertaking, contained in said note, as modified by said oral contract, and by reason of said default there became due and payable to the plaintiff the unpaid balance of said advance, towit, \$932.12, together with interest at the legal rate on \$155.32 thereof from Dec. 2nd, 1938, on \$155.32 thereof from Jan. 2nd, 1939, on \$155.32 thereof from Feb. 2nd, 1939, on \$155.32 thereof from March 2nd, 1939, on \$155.32 thereof from April 2nd, 1939, and on \$155.52 thereof from May 2nd, 1939, which said sum the defendant has neglected and refused to pay and still neglects and refuses to pay;

That said defendant, by his said note, further agreed to pay as and for an attorney's fee if the said note is placed in the hands of an attorney, 10% of the unpaid amount of said note; that said note has been placed in the hands of an attorney for collection.



## Count 2.

That heretofore, towit, on the 2nd day of Dec., 1938, the said defendant was and became indebted to the plaintiff in the sum of \$932.12 for money theretofore had and received by the defendant from the plaintiff, and being so indebted, in consideration thereof, the defendant undertook and faithfully promised to pay said plaintiff the last mentioned sum of money when he should be thereto requested; that although repeated demand has been made on defendant for said sum said defendant has failed, neglected and refused and still fails, neglects and refuses to pay the said sum or any part thereof to the damage of the plaintiff in the said sum of \$932.12.

## Eighth Cause of Action

## Count 1.

That heretofore, towit, on or about the 28th day of February, 1938, the said defendant, for and in consideration of the sum of \$2,330.00 to be advanced by the plaintiff at its office in Hilo, County and Island of Hawaii, agreed, promised and undertook to repay to the plaintiff, at its office in said Hilo, the said sum of \$2,330.00 in equal monthly installments of \$155.32 each until the whole amount of said sum should be fully paid, except that the last installment was to include any fractional portion of an installment remaining unpaid; that it was understood and agreed by the plaintiff and defendant that said monthly installments would be due and payable on the same day in each month that the advance was

made, following the advance by the plaintiff; that defendant, in consideration of said advance made, executed and delivered to the plaintiff his promissory note dated February 28, 1938, a copy of which is hereto attached, made a part hereof and marked Exhibit "H"; that said advance was made by the plaintiff on March 8, 1938; that notwithstanding his several promises and undertakings contained in said note, modified by the oral contract of plaintiff and defendant, said defendant has not paid any part of said advance, excepting the sum of \$1,242.56;

That the defendant has defaulted in the payment of his said undertaking, contained in said note, as modified by said oral contract, and by reason of said default there became due and payable to the plaintiff the unpaid balance of said advance, towit, \$1,087.44, together with interest at the legal rate on \$155.32 thereof from December 8, 1938, on \$155.32 thereof from January 8, 1939, on \$155.32 thereof from February 8, 1939, on \$155.32 thereof from March 8, 1939, on \$155.32 thereof from April 8, 1939, on \$155.32 thereof from May 8, 1939, and on \$155.52 thereof from June 8, 1939, which said sum the defendant has neglected and refused to pay and still neglects and refuses to pay;

That said defendant, by his said note, further agreed to pay as and for an attorney's fee if the said note is placed in the hands of an attorney, 10% of the unpaid amount of said note; that said note has been placed in the hands of an attorney for collection.

## Count 2.

That heretofore, towit, on the 8th day of December, 1938, the said defendant was and became indebted to the plaintiff in the sum of \$1,087.44 for money theretofore had and received by the defendant from the plaintiff, and being so indebted, in consideration thereof, the defendant undertook and faithfully promised to pay said plaintiff the last mentioned sum of money when he should be thereto requested; that although repeated demand has been made on defendant for said sum said defendant has failed, neglected and refused and still fails, neglects and refuses to pay the said sum or any part thereof to the damage of the plaintiff in the said sum of \$1,087.44.

All to the damage of the plaintiff in the sum of \$4,971.84

That Bank of Hawaii and Bishop National Bank of Hawaii at Honolulu are debtors of the defendant.

Wherefore plaintiff brings this action and prays that said defendant be summoned to appear and answer this declaration according to law; that it may have judgment against said defendant on Causes of Action I to VIII inclusive in the principal sum of \$4,971.84, together with interest on the several amounts from the dates as hereinabove set forth, and an attorney's fee equal to 10% of the amount of such principal and interest, together with its costs; and that certified copies hereof be left with Bank of Hawaii and Bishop National Bank of Hawaii at



Honolulu, Garnishees, and that they be instructed to withhold all moneys due to the defendant, and that a writ of attachment shall issue out of this Court and under the seal thereof against said defendant and be levied against such property as he may have subject to execution, and that the defendant answer such judgment as the plaintiff may have and recover herein.

HILO FINANCE AND THRIFT  
COMPANY, LIMITED,

By CARLSMITH & CARLSMITH,  
Its Attorneys.

Third Judicial Circuit,  
County of Hawaii,  
Territory of Hawaii—ss.

W. H. Hill, being first duly sworn, says upon his oath that he is the manager and Treasurer of Hilo Finance and Thrift Co., Ltd., plaintiff above named, and that he makes this verification on behalf of the plaintiff; that he has read the foregoing declaration, knows the contents thereof and that the same is true.

/s/ W. H. HILL.

Subscribed and sworn to before me this 22nd day of June, 1943.

[Seal]      /s/ FLORENCE SOUZA,  
Notary Public, Third Judicial Circuit, Territory of  
Hawaii.

My Commission expires June 1, 1947.

## EXHIBIT "A"

Collateral Note. No. 796. \$2,330.00

Aug. 31, 1937

For value received, I, we, or either of us, jointly and severally promise to pay to the order of Hilo Finance and Thrift Company, Ltd., of Hilo, Hawaii, at their office the sum of Twenty-three Hundred Thirty and No/100 Dollars in 15 equal installments of \$155.32 each on the 30th of each month following the date of this note, with interest from maturity at the rate of .....% per annum until paid, with ten per cent additional on amount unpaid, if placed in the hands of an attorney for collection, having deposited with and pledged to said Finance Company, as collateral security for the payment of this note, and all other liabilities of the undersigned to the legal holder hereof, whether direct, contingent, heretofore or hereafter contracted, the following property, to-wit:

Secured by collateral agreement and assignment of conditional sale of same date.

Default in the payment of any installment hereon shall render the unpaid balance on this note due and payable, and the owner or holder hereof may at any time thereafter sell all or any part of said collateral at public or private sale, with or without notice of the time and place of sale and without demand of performance.

The owner or holder of this note may buy any of said collateral at said sale, and the proceeds of the

sale shall be applied first to the payment of expenses of making such sale, including a reasonable attorney fee, if any attorney is employed; second, to the payment of the principal debt hereby secured and the interest thereon; third, to the payment of any other debt which the undersigned may now or hereafter owe the owner or holder of this note, either as principal, co-maker, surety, endorser, or otherwise, and if any surplus remains the same to be paid to the undersigned.

The makers, co-makers, endorsers, sureties or guarantors of this note each for himself, hereby severally agree to pay all costs of collecting or securing or attempting to collect or secure, this note, including a reasonable attorney fee, whether the same be collected or secured by suit or otherwise, and severally Waive, demand, presentment, protest and/or notice of protest, sale, demand or suit, and all other requirements necessary to hold them and agree that time of payment may be extended without notice to them of such extension. The owner or holder of this note is hereby authorized to apply, on or after maturity, to the payment of this note any funds in its possession belonging to the maker, co-maker, surety, endorser, guarantor or any one of them.

/s/ GEO. B. CAREY,  
Maker.

## EXHIBIT A-1

## HILO FINANCE &amp; THRIFT CO., LTD.

Note No. 796

Date of Note, 8/31/37. Date of Loan, 9/1/37.

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....		
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes		
due to H. F. & T. Co., Ltd.....	2,000.00	2,330.00
	<hr/>	<hr/>

## Payments received by Plaintiff:

Date	Amount	
10/1/37.....	\$155.32	
11/2/37.....	155.32	
12/3/37.....	155.32	
1/4/38.....	155.32	
2/2/38.....	155.32	
3/8/38.....	155.32	
4/5/38.....	155.32	
5/4/38.....	155.32	
7/14/38.....	155.32	
9/28/38.....	155.32	
12/1/38.....	155.32	
12/1/38.....	155.32	
12/31/38.....	155.32	
	<hr/>	2,174.48
Unpaid Balance of total loan or face		
of note .....		155.52
		<hr/>
		\$2,330.00
		<hr/>
Rebate of interest paid to Defendant	<hr/>	<hr/>

## EXHIBIT "B"

Collateral Note. No. 871. \$2,330.00

Oct. 1, 1937. Sept. 28, 1937

For value received, I, we, or either of us, jointly and severally promise to pay to the order of Hilo Finance and Thrift Company, Ltd., of Hilo, Hawaii, at their office the sum of Twenty-three Hundred Thirty and No/100 Dollars in 15 equal installments of \$155.32 each on the 28th of each month following the date of this note, with interest from maturity at the rate of .....% per annum until paid, with ten per cent additional on amount unpaid, if placed in the hands of an attorney for collection, having deposited with and pledged to said Finance Company, as collateral security for the payment of this note, and all other liabilities of the undersigned to the legal holder hereof, whether direct, contingent, heretofore or hereafter contracted, the following property, to-wit:

Secured by collateral agreement and assignment of conditional sale agreement of said date.

Default in the payment of any installment hereon shall render the unpaid balance on this note due and payable, and the owner or holder hereof may at any time thereafter sell all or any part of said collateral at public or private sale, with or without notice of the time and place of sale and without demand of performance.

The owner or holder of this note may buy any of said collateral at said sale, and the proceeds of the sale shall be applied first to the payment of expenses

of making such sale, including a reasonable attorney fee, if any attorney is employed; second, to the payment of the principal debt hereby secured and the interest thereon; third, to the payment of any other debt which the undersigned may now or hereafter owe the owner or holder of this note, either as principal, co-maker, surety, endorser, or otherwise, and if any surplus remains the same to be paid to the undersigned.

The makers, co-makers, endorsers, sureties or guarantors of this note each for himself, hereby severally agree to pay all costs of collecting or securing or attempting to collect or secure, this note, including a reasonable attorney fee, whether the same be collected or secured by suit or otherwise, and severally Waive demand, presentment, protest and/or notice of protest, sale, demand or suit, and all other requirements necessary to hold them and agree that time of payment may be extended without notice to them of such extension. The owner or holder of this note is hereby authorized to apply, on or after maturity, to the payment of this note any funds in its possession belonging to the maker, co-maker, surety, endorser, guarantor or any one of them.

/s/ GEO. B. CAREY,  
Maker.



EXHIBIT B-1

HILO FINANCE & THRIFT CO., LTD.

Note No. 871

Date of Note, 9/28/37. Date of Loan, 10/1/37

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....		
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes due to		
H. F. & T Co., Ltd.....	2,000.00	2,330.00
	<hr/>	<hr/>

Payments received by Plaintiff:

Date	Amount
11/2/37.....	\$155.32
12/2/37.....	155.32
1/4/38.....	155.32
2/2/38.....	19.36
2/2/38.....	135.96
3/8/38.....	155.32
4/6/38.....	155.32
5/4/38.....	155.32
7/14/38.....	155.32
8/27/38.....	155.32
9/28/38.....	155.32
12/1/38.....	155.32
12/1/38.....	155.32
12/31/38.....	155.32
	<hr/>

2,019.16

Unpaid Balance of total loan or face  
of note .....

310.84

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\$2,330.00

Rebate of interest paid to Defendant ———

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## EXHIBIT "C"

Collateral Note. No. 961. \$2,330.00

Nov. 2, 1937. October 29, 1937

For value received, I, we, or either of us, jointly and severally promise to pay to the order of Hilo Finance and Thrift Company, Ltd., of Hilo, Hawaii, at their office the sum of Twenty-three Hundred Thirty and No/100 Dollars in 15 equal installments of \$155.32 each on the 29th of each month following the date of this note, with interest from maturity at the rate of .....% per annum until paid, with ten per cent additional on amount unpaid, if placed in the hands of an attorney for collection, having deposited with and pledged to said Finance Company, as collateral security for the payment of this note, and all other liabilities of the undersigned to the legal holder hereof, whether direct, contingent, heretofore or hereafter contracted, the following property, to-wit:

Secured by collateral agreement and assignment of conditional sale of same date.

Default in the payment of any installment hereon shall render the unpaid balance on this note due and payable, and the owner or holder hereof may at any time thereafter sell all or any part of said collateral at public or private sale, with or without notice of the time and place of sale and without demand of performance.

The owner or holder of this note may buy any of said collateral at said sale, and the proceeds of the



sale shall be applied first to the payment of expenses of making such sale, including a reasonable attorney fee, if any attorney is employed; second, to the payment of the principal debt hereby secured and the interest thereon; third, to the payment of any other debt which the undersigned may now or hereafter owe the owner or holder of this note, either as principal, co-maker, surety, endorser, or otherwise, and if any surplus remains the same to be paid to the undersigned.

The makers, co-makers, endorsers, sureties or guarantors of this note each for himself, hereby severally agree to pay all costs of collecting or securing or attempting to collect or secure, this note, including a reasonable attorney fee, whether the same be collected or secured by suit or otherwise, and severally Waive demand, presentment, protest and/or notice of protest, sale, demand or suit, and all other requirements necessary to hold them and agree that time of payment may be extended without notice to them of such extension. The owner or holder of this note is hereby authorized to apply, on or after maturity, to the payment of this note any funds in its possession belonging to the maker, co-maker, surety, endorser, guarantor or any one of them.

/s/ GEO. B. CAREY,  
Maker.

## EXHIBIT C-1

HILO FINANCE &amp; THRIFT CO., LTD.

Note No. 961

Date of Note, 10/29/37. Date of Loan, 11/2/37

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....		
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes due to		
H. F. & T. Co., Ltd.....	2,000.00	2,330.00

## Payments received by Plaintiff:

Date	Amount	
12/2/37.....	\$155.32	
1/4/38.....	155.32	
2/2/38.....	155.32	
3/8/38.....	19.36	
3/8/38.....	135.96	
4/6/38.....	155.32	
5/4/38.....	155.32	
7/14/38.....	155.32	
8/27/38.....	155.32	
9/28/38.....	155.32	
12/1/38.....	155.32	
12/1/38.....	155.32	
12/31/38.....	155.32	
		1,863.84
Unpaid balance of total loan or face of note		1,466.16
		2,330.00
Rebate of interest paid to Defendant	———	

## EXHIBIT D

Collateral Note. No. 1006. \$2,330.00

Nov. 18, 1937. Nov. 17, 1937

For value received, I, we, or either of us, jointly and severally promise to pay to the order of Hilo Finance and Thrift Company, Ltd., of Hilo, Hawaii, at their office the sum of Twenty-three Hundred Thirty and No/100 Dollars in 15 equal installments of \$155.32 each on the 17th of each month following the date of this note, with interest from maturity at the rate of .....% per annum until paid, with ten per cent additional on amount unpaid, if placed in the hands of an attorney for collection, having deposited with and pledged to said Finance Company, as collateral security for the payment of this note, and all other liabilities of the undersigned to the legal holder hereof, whether direct, contingent, heretofore or hereafter contracted, the following property, to-wit:

Secured by conditional sales agreement.

Default in the payment of any installment hereon shall render the unpaid balance on this note due and payable, and the owner or holder hereof may at any time thereafter sell all or any part of said collateral at public or private sale, with or without notice of the time and place of sale and without demand of performance.

The owner or holder of this note may buy any of said collateral at said sale, and the proceeds of the sale shall be applied first to the payment of expenses

of making such sale, including a reasonable attorney fee, if any attorney is employed; second, to the payment of the principal debt hereby secured and the interest thereon; third, to the payment of any other debt which the undersigned may now or hereafter owe the owner or holder of this note, either as principal, co-maker, surety, endorser, or otherwise, and if any surplus remains the same to be paid to the undersigned.

The makers, co-makers, endorsers, sureties or guarantors of this note each for himself, hereby severally agree to pay all costs of collecting or securing or attempting to collect or secure, this note, including a reasonable attorney fee, whether the same be collected or secured by suit or otherwise, and severally Waive demand, presentment, protest and/or notice of protest, sale, demand or suit, and all other requirements necessary to hold them and agree that time of payment may be extended without notice to them of such extension. The owner or holder of this note is hereby authorized to apply, on or after maturity, to the payment of this note any funds in its possession belonging to the maker, co-maker, surety, endorser, guarantor or any one of them.

/s/ GEO. B. CAREY,  
Maker.

EXHIBIT D-1

HILO FINANCE & THRIFT CO., LTD.

Note No. 1006

Date of Note, 11/17/37. Date of Loan, 11/18/37

Total Loan or face of Note.....	\$2,330.00
Interest deducted in advance.....	\$ 330.00
Cash received by Defendant.....	2,000.00
Paid on notes to Realty Investment Co.....	
Credited to pre-existing notes due to H. F. & T. Co., Ltd.....	2,330.00

Payments received by Plaintiff:

Date	Amount
1/4/38.....	\$155.32
2/2/38.....	155.32
3/8/38.....	155.32
4/6/38.....	155.32
4/6/38.....	19.36
5/4/38.....	155.32
7/14/38.....	155.32
8/27/38.....	155.32
9/28/38.....	155.32
12/1/38.....	155.32
12/1/38.....	155.32
12/31/38.....	155.32
	1,708.52

Unpaid Balance of total loan or face of note.....	621.48
	<u>\$2,330.00</u>

Rebate of interest paid to Defendant ———	<u><u>          </u></u>
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## EXHIBIT "E"

Collateral Note. No. 1043. \$2,330.00

Dec. 2, 1937. November 30, 1937

For value received, I, we, or either of us, jointly and severally promise to pay to the order of Hilo Finance and Thrift Company, Ltd., of Hilo, Hawaii, at their office the sum of Twenty-three Hundred Thirty and No/100 Dollars in 15 equal installments of \$155.32 each on the 30th of each month following the date of this note, with interest from maturity at the rate of .....% per annum until paid, with ten per cent additional on amount unpaid, if placed in the hands of an attorney for collection, having deposited with and pledged to said Finance Company, as collateral security for the payment of this note, and all other liabilities of the undersigned to the legal holder hereof, whether direct, contingent, heretofore or hereafter contracted, the following property, to-wit:

Secured by collateral agreement and assignment of conditional sale agreement of same date.

Default in the payment of any installment hereon shall render the unpaid balance on this note due and payable, and the owner or holder hereof may at any time thereafter sell all or any part of said collateral at public or private sale, with or without notice of the time and place of sale and without demand of performance.

The owner or holder of this note may buy any of said collateral at said sale, and the proceeds of the



sale shall be applied first to the payment of expenses of making such sale, including a reasonable attorney fee, if any attorney is employed; second, to the payment of the principal debt hereby secured and the interest thereon; third, to the payment of any other debt which the undersigned may now or hereafter owe the owner or holder of this note, either as principal, co-maker, surety, endorser, or otherwise, and if any surplus remains the same to be paid to the undersigned.

The makers, co-makers, endorsers, sureties or guarantors of this note each for himself, hereby severally agree to pay all costs of collecting or securing or attempting to collect or secure, this note, including a reasonable attorney fee, whether the same be collected or secured by suit or otherwise, and severally Waive demand, presentment, protest and/or notice of protest, sale, demand or suit, and all other requirements necessary to hold them and agree that time of payment may be extended without notice to them of such extension. The owner or holder of this note is hereby authorized to apply, on or after maturity, to the payment of this note any funds in its possession belonging to the maker, co-maker, surety, endorser, guarantor or any one of them.

/s/ GEO. B. CAREY,  
Maker.

## EXHIBIT E-1

HILO FINANCE &amp; THRIFT CO., LTD.

Note No. 1043

Date of Note, 11/30/37. Date of Loan, 12/2/37

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....		
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes due to H. F. & T. Co., Ltd.....	2,000.00	2,330.00
	<hr/>	<hr/> <hr/>

## Payments received by Plaintiff:

Date	Amount	
1/4/38.....	\$155.12	
1/4/38.....	.20	
2/2/38.....	77.66	
3/8/38.....	232.78	
4/6/38.....	155.32	
5/4/38.....	19.36	
5/4/38.....	135.96	
7/14/38.....	19.36	
7/14/38.....	135.96	
8/27/38.....	155.52	
9/28/38.....	155.32	
12/1/38.....	155.32	
12/1/38.....	155.32	
12/31/38.....	155.32	
	<hr/>	1,708.52
Unpaid Balance of total loan or face of note .....		621.38
		<hr/>
		\$2,330.00
		<hr/> <hr/>
Rebate of interest paid to Defendant .....		<hr/> <hr/>

## EXHIBIT "F"

Collateral Note. No. 1173. \$2,330.00

Jan 4, 1938. December 31, 1937

For value received, I, we, or either of us, jointly and severally promise to pay to the order of Hilo Finance and Thrift Company, Ltd., of Hilo, Hawaii, at their office the sum of Twenty-three Hundred Thirty and No/100 Dollars in 15 equal installments of \$155.32 each on the 31st of each month following the date of this note, with interest from maturity at the rate of .....% per annum until paid, with ten per cent additional on amount unpaid, if placed in the hands of an attorney for collection, having deposited with and pledged to said Finance Company, as collateral security for the payment of this note, and all other liabilities of the undersigned to the legal holder hereof, whether direct, contingent, heretofore or hereafter contracted, the following property, to-wit:

Secured by collateral agreement and assignment of conditional sale agreement of same date.

Default in the payment of any installment hereon shall render the unpaid balance on this note due and payable, and the owner or holder hereof may at any time thereafter sell all or any part of said collateral at public or private sale, with or without notice of the time and place of sale and without demand of performance.

The owner or holder of this note may buy any of said collateral at said sale, and the proceeds of the

sale shall be applied first to the payment of expenses of making such sale, including a reasonable attorney fee, if any attorney is employed ; second, to the payment of the principal debt hereby secured and the interest thereon ; third, to the payment of any other debt which the undersigned may now or hereafter owe the owner or holder of this note, either as principal, co-maker, surety, endorser, or otherwise, and if any surplus remains the same to be paid to the undersigned.

The makers, co-makers, endorsers, sureties or guarantors of this note each for himself, hereby severally agree to pay all costs of collecting or securing or attempting to collect or secure, this note, including a reasonable attorney fee, whether the same be collected or secured by suit or otherwise, and severally Waive demand, presentment, protest and/or notice of protest, sale, demand or suit, and all other requirements necessary to hold them and agree that time of payment may be extended without notice to them of such extension. The owner or holder of this note is hereby authorized to apply, on or after maturity, to the payment of this note any funds in its possession belonging to the maker, co-maker, surety, endorser, guarantor or any one of them.

/s/ GEO. B. CAREY,  
Maker.

EXHIBIT F-1

HILO FINANCE & THRIFT CO., LTD.

Note No. 1173

Date of Note, 12/31/37. Date of Loan, 1/4/38

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....		
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes due to H. F. & T. Co., Ltd.....	2,000.00	2,330.00
	<hr/>	<hr/> <hr/>

Payments received by Plaintiff:

Date	Amount	
3/8/38.....	\$310.84	
4/6/38.....	155.32	
5/4/38.....	155.32	
7/14/38.....	155.32	
8/27/38.....	155.12	
9/28/38.....	155.32	
12/1/38.....	155.32	
12/1/38.....	155.32	
12/31/38.....	155.32	
	<hr/>	1,553.20

Unpaid Balance of total loan or face of note.....	776.80
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\$2,330.00

Rebate of interest paid to Defendant ———

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## EXHIBIT "G"

Collateral Note. No. 1234. \$2,330.00

Feb. 2, 1938. January 31, 1938

For value received, I, we, or either of us, jointly and severally promise to pay to the order of Hilo Finance and Thrift Company, Ltd., of Hilo, Hawaii, at their office the sum of Twenty-three Hundred Thirty and No/100 Dollars in 15 equal installments of \$155.32 each on the 30th of each month following the date of this note, with interest from maturity at the rate of .....% per annum until paid, with ten per cent additional on amount unpaid, if placed in the hands of an attorney for collection, having deposited with and pledged to said Finance Company, as collateral security for the payment of this note, and all other liabilities of the undersigned to the legal holder hereof, whether direct, contingent, heretofore or hereafter contracted, the following property, to-wit:

Secured by collateral agreement and assignment of conditional sale agreement of same date.

Default in the payment of any installment hereon shall render the unpaid balance on this note due and payable, and the owner or holder hereof may at any time thereafter sell all or any part of said collateral at public or private sale, with or without notice of the time and place of sale and without demand of performance.

The owner or holder of this note may buy any of said collateral at said sale, and the proceeds of the sale shall be applied first to the payment of expenses



of making such sale, including a reasonable attorney fee, if any attorney is employed; second, to the payment of the principal debt hereby secured and the interest thereon; third, to the payment of any other debt which the undersigned may now or hereafter owe the owner or holder of this note, either as principal, co-maker, surety, endorser, or otherwise, and if any surplus remains the same to be paid to the undersigned.

The makers, co-makers, endorsers, sureties or guarantors of this note each for himself, hereby severally agree to pay all costs of collecting or securing or attempting to collect or secure, this note, including a reasonable attorney fee, whether the same be collected or secured by suit or otherwise, and severally Waive demand, presentment, protest and/or notice of protest, sale, demand or suit, and all other requirements necessary to hold them and agree that time of payment may be extended without notice to them of such extension. The owner or holder of this note is hereby authorized to apply, on or after maturity, to the payment of this note any funds in its possession belonging to the maker, co-maker, surety, endorser, guarantor or any one of them.

/s/ GEO. B. CAREY,  
Maker.

## EXHIBIT G-1

HILO FINANCE &amp; THRIFT CO., LTD.

Note No. 1234

Date of Note, 1/31/38. Date of Loan, 2/2/38

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....		
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes due to		
H. F. & T. Co., Ltd.....	2,000.00	2,330.00
	<hr/>	<hr/> <hr/>

## Payments received by Plaintiff:

Date	Amount	
3/8/38.....	\$155.32	
4/6/38.....	155.32	
5/4/38.....	155.32	
7/14/38.....	155.32	
8/27/38.....	155.32	
9/28/38.....	155.32	
12/1/38.....	155.32	
12/1/38.....	155.32	
12/31/38.....	155.32	
	<hr/>	1,397.88
Unpaid Balance of total loan or face		
of note.....		932.12
		<hr/>
		\$2,330.00
		<hr/> <hr/>
Rebate of interest paid to Defendant	<hr/>	<hr/> <hr/>

## EXHIBIT "H"

Collateral Note. No. 1354. \$2,330.00

Mar. 8, 1938. February 28, 1938

For value received, I, we, or either of us, jointly and severally promise to pay to the order of Hilo Finance and Thrift Company, Ltd., of Hilo, Hawaii, at their office the sum of Twenty-three Hundred Thirty and No/100 Dollars in 15 equal installments of \$155.32 each on the 28th of each month following the date of this note, with interest from maturity at the rate of .....% per annum until paid, with ten per cent additional on amount unpaid, if placed in the hands of an attorney for collection, having deposited with and pledged to said Finance Company, as collateral security for the payment of this note, and all other liabilities of the undersigned to the legal holder hereof, whether direct, contingent, heretofore or hereafter contracted, the following property, to-wit:

Secured by collateral agreement and assignment of conditional sale agreement of same date.

Default in the payment of any installment hereon shall render the unpaid balance on this note due and payable, and the owner or holder hereof may at any time thereafter sell all or any part of said collateral at public or private sale, with or without notice of the time and place of sale and without demand of performance.

The owner or holder of this note may buy any of said collateral at said sale, and the proceeds of the

sale shall be applied first to the payment of expenses of making such sale, including a reasonable attorney fee, if any attorney is employed; second, to the payment of the principal debt hereby secured and the interest thereon; third, to the payment of any other debt which the undersigned may now or hereafter owe the owner or holder of this note, either as principal, co-maker, surety, endorser, or otherwise, and if any surplus remains the same to be paid to the undersigned.

The makers, co-makers, endorsers, sureties or guarantors of this note each for himself, hereby severally agree to pay all costs of collecting or securing or attempting to collect or secure, this note, including a reasonable attorney fee, whether the same be collected or secured by suit or otherwise, and severally Waive demand, presentment, protest and/or notice of protest, sale, demand or suit, and all other requirements necessary to hold them and agree that time of payment may be extended without notice to them of such extension. The owner or holder of this note is hereby authorized to apply, on or after maturity, to the payment of this note any funds in its possession belonging to the maker, co-maker, surety, endorser, guarantor or any one of them.

/s/ GEO. B. CAREY,  
Maker.

## EXHIBIT H-1

## HILO FINANCE &amp; THRIFT CO., LTD.

Note No. 1354

Date of Note, 2/28/38. Date of Loan, 3/8/38

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....		
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes due to H. F. & T. Co., Ltd.....	2,000.00	2,330.00
	<hr/>	<hr/> <hr/>

## Payments received by Plaintiff:

Date	Amount	
4/6/38.....	\$155.32	
5/4/38.....	155.32	
7/14/38.....	155.32	
8/27/38.....	155.32	
9/28/38.....	155.32	
12/1/38.....	155.32	
12/1/38.....	155.32	
12/31/38.....	155.32	
	<hr/>	1,242.56
Unpaid Balance of total loan or face of note .....		1,087.44
		<hr/> <hr/>
		\$2,330.00
		<hr/> <hr/>
Rebate of interest paid to Defendant .....	<hr/>	<hr/> <hr/>

[Endorsed]: Received and filed in the Supreme  
Court July 31, 1944. Chas. H. K. Holt, Clerk.

## PLAINTIFF'S EXHIBIT I

HILO FINANCE &amp; THRIFT CO., LTD.

Calculation on hypothetical question on the loan of \$6942.52 of principal:

\$1000.00	\$ 1000.00
922.34	1922.34
844.68	2767.02
767.02	3534.04
689.36	4223.40
611.70	4835.10
534.04	5369.14
456.38	5285.52
378.72	6204.24
301.06	6505.30
223.40	6728.70
145.74	6874.44
68.08	6942.52
<hr/>	<hr/>
6942.52	62731.76



## PLAINTIFF'S EXHIBIT J

Loan of \$1,165.00 for 15 months; Interest, \$165.00; 14 installments, \$77.67; 1 installment, \$77.62.

Cash out	\$1,000.00	Interest	Total
Payment 1	57.67	\$ 20.00	\$ 77.67
	<u>\$ 942.33</u>		
Payment 2	58.82	18.85	77.67
	<u>\$ 883.51</u>		
Payment 3	60.00	17.67	77.67
	<u>\$ 823.51</u>		
Payment 4	61.20	16.47	77.67
	<u>\$ 762.31</u>		
Payment 5	62.42	15.25	77.67
	<u>\$ 699.89</u>		
Payment 6	63.67	14.00	77.67
	<u>\$ 636.22</u>		
Payment 7	64.95	12.72	77.67
	<u>\$ 571.27</u>		
Payment 8	66.24	11.43	77.67
	<u>\$ 505.03</u>		
Payment 9	67.57	10.10	77.67
	<u>\$ 437.46</u>		
Payment 10	68.92	8.75	77.67
	<u>\$ 368.54</u>		
Payment 11	70.30	7.37	77.67
	<u>\$ 298.24</u>		
Payment 12	71.71	5.96	77.67
	<u>\$ 226.53</u>		
Payment 13	73.14	4.53	77.67
	<u>\$ 153.39</u>		
Payment 14	74.60	3.07	77.67
	<u>\$ 78.79</u>		
Payment 15	76.05	1.57	77.67
	<u>\$ 2.74</u>	<u>\$167.74</u>	<u>\$1,165.00</u>

This Exhibit shows that the rate is slightly less than 2% per month (omitting rebate) as, if it had been 2%, there would have been \$2.74 still to pay.

## PLAINTIFF'S EXHIBIT K

November 29, 1938

Hilo Finance & Thrift Company  
Hilo, Hawaii,

Gentlemen:

Enclosed you will find our check in the amount of \$4,349.36 which is to cover repayment on loan for the months of August and September. We are making plans which we trust will materialize the early part of December that will enable us to make up the payments due your firm for the months of October and November thus bringing the account up to date. If for some reason we are unable to make the two payments, we will at least make the one.

Circumstances over which I had no control, involving a new arrangement which was to have permitted me to have made my payments to you as was agreed upon but an unexpected delay was brought about by the attorneys not preparing the necessary documents which in turn caused me to fall behind with my obligations to you which in turn gave you the privilege of deducting certain rebates of which prior to any delinquency, you were returning to me under our agreement.

However, it is my opinion that there were certain portions of the rebates that were earned by reason of having met payments according to agreement and that by so doing that portion of the rebates so earned should have been credited to us. In other

words, if you wished to exercise your right to withhold rebates, then it would seem that if you withheld only such rebates that would apply to the monthly payments that were actually in default, giving me credit for all rebates on such payments that were made according to agreement, up to the time that I defaulted and became delinquent with these payments, would, in my opinion, be the more equitable way to handle this subject.

I am mailing Mr. Tennant a copy of this letter, asking him to go over the attached schedule covering the various notes of which payments were made satisfactorily and which shows the amount of earned rebate which has been prepared in accordance with above explanation. Since Mr. Tennant is leaving shortly for Hilo, it will give your firm and he a few days to consider my request and trust that in view of the many years of our dealings, all of which I was able to meet my obligations satisfactorily to you, this being the only case of defaultation, any consideration that you are inclined to extend me, I assure you, will be greatly appreciated.

Yours very truly,

GEO. B. CAREY, Manager,  
White Sewing Machine Agency.

GBC:PM

## PLANTIFF'S EXHIBIT L

## Collateral Form for Pledging of Contracts

Return of collateral transferred and delivered to the Bank of Hawaii by Geo. B. Carey under terms of agreement dated September 10, 1936, between Geo. B. Carey, Bank of Hawaii, White Sewing Machine Company (Cleveland) and Discount Corporation, Ltd.

Estimation of amount due by purchasers under installment contracts assigned for November 1st, 1938.

Value of Collateral estimated at last report Oct. 1st, 1938.....		\$176,847.96
Add: New Contracts delivered during Month.....		11,403.23
		<hr/>
Total .....		\$188,251.19
Less: Total Collections on Contracts	\$ 13,474.66	
Less: Collected on Island of Hawaii contracts assigned to Hilo Finance & Thrift Co., Ltd.....	\$2,449.20	
Collected on other contracts assigned..	288.60	2,837.80
		<hr/>
Net Collections on contracts assigned to Bank of Hawaii.....	\$ 10,636.86	
Amounts due under Collateral withdrawn by reason of repossession or uncollectibility .....		3,492.06
		<hr/>
Total Deductions.....		14,128.92
		<hr/>

Value of Collateral at Nov. 1, 1938....	\$174,122.27
Considered as Class "A" 93.24%....	163,122.46
Considered as Class "B" 6.76%....	\$ 10,999.81

Note: Percentages as established last Auditor's Report

Loan from Bank of Hawaii.....	\$ 25,000.00
Loan from White Sewing Machine Co.	18,953.28
Loan from Discount Corp. Ltd.....	7,169.99

Total Loans .....	\$ 51,123.27
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Collateral at Bank of Hawaii consid- ered Class "A" 93.24%.....	\$163,122.46
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Collateral requirement ratio.

Over all $2\frac{1}{2}$ times amount.....	127,808.17
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Collateral over requirement.....	\$ 35,314.29
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The aggregate balance of Collateral at November 1st, 1938 amounted to \$209,760.13 was distributed as follows:

Bank of Hawaii.....	\$174,122.27
Hilo Finance & Thrift Co., Ltd.....	34,705.40
Geo. B. Carey.....	932.46

Total .....	\$209,760.13
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[Endorsed]: Filed June 22, 1943.

[Title of Circuit Court and Cause.]

ANSWER SET OFF COUNTER CLAIM

Comes Now George B. Carey, defendant, and for answer, admits, denies and alleges:

I.

Admits the matter contained in Paragraph 1 of the Amended Declaration, as to corporate existence to plaintiff.

II.

Denies each and every allegation of fact contained in each "Cause of Action" and each "Count" of the said Amended Declaration.

And for a Set Off and Counterclaim Defendant Alleges:

I.

That on or about November 21, 1933, and at all times herein mentioned since that date, Plaintiff herein, was engaged in the business of lending money at interest in Hilo, Territory of Hawaii.

II.

That on or about November 21, 1933, Defendant entered into negotiations with Plaintiff to obtain the loan of money from the said organization and, thereafter entered into an oral financing agreement with said Plaintiff whereby the said Plaintiff agreed to loan money on open account on certain collateral security as needed by the said defendant, the loans, as made, to be evidenced by promissory notes in the form attached as exhibits to the Amended Declaration.



## III.

That thereafter about April 18, 1934, Defendant commenced borrowing money from the said Defendant pursuant to the said agreement, and thereafter did continuously borrow and repay loans by Plaintiff upon an open account for money had and received and executed notes for the sums so borrowed, to a total of \$104,850.00 face value of notes executed for a total cash received of \$17,973.32. That upon all of the loans so made there was charged by the Plaintiff against the Defendant interest at a rate greater than 2 per cent per month, which was included in the face value of each note so executed.

## IV.

That Defendant repaid to the Plaintiff the entire principal sum of said loans on or before December 30, 1938, by paying to the said Plaintiff the total sum of \$23,161.94 of which sum \$6,188.62 was paid on the usurious interest charged as aforesaid.

## V.

That as set forth above, Defendant has wholly paid all moneys borrowed under the loan contract heretofore set forth and in addition has been mulcted of criminal usury to Plaintiff in the sum of \$6,188.62.

## VI.

That at all times mentioned herein wherein Plaintiff loaned money to Defendant, the said Hilo Finance and Thrift Company, Limited, has been a licensed money lender under the terms of Chapter

233, Revised Laws of Hawaii, 1935, as amended by the Session Laws of 1937.

Wherefore Defendant prays that the Plaintiff take nothing by his declaration and that judgment issue herein for Defendant for \$6,188.62 with interest from December 30, 1938, together with his costs, expenses, and attorney fees.

/s/ GEO. B. CAREY.

County of Hawaii,  
Territory of Hawaii—ss.

George B. Carey, being first duly sworn, says: That he is the defendant in the above entitled action; that he has read the foregoing Answer, Set Off and Counter Claim and that the same is true.

/s/ GEO. B. CAREY.

Subscribed and sworn to before me this 24th day of June, 1943.

[Seal]      /s/ WILLIAM R. WHITTINGTON,  
Ass't Clerk 3rd Circuit Court,  
T. H.

Notice is hereby given that, among other defenses, Defendant will present and rely upon the following defenses:

1. Payment.
2. Lack of Consideration.
3. Usury—both civil and criminal.
4. Illegality.
5. Fraud.

PHIL CASS,  
Attorney for Defendant.

[Endorsed]: Filed June 24, 1943.

[Title of Circuit Court and Cause.]

ANSWER TO SET OFF AND COUNTER  
CLAIM

Comes now Hilo Finance and Thrift Company, Limited, plaintiff herein, by and through its attorneys, Carlsmith & Carlsmith and Messrs. Smith, Wild, Beebe and Cades, and for answer to the Set Off and Counter Claim filed herein denies each and every allegation therein contained.

And Plaintiff, pursuant to rule of Court, hereby gives notice that it will and does hereby rely on the defense of illegality, payment and Statute of Limitations.

And for further answer the plaintiff alleges and shows unto this Honorable Court that it is a corporation which, at all times mentioned in said Set Off and Counter Claim, was duly licensed under Act 154 of the Session Laws of Hawaii, 1933, and under Act 231, Series D-140, Session Laws of Hawaii, 1937, and that the claim set forth in said Set Off and Counter Claim is wholly barred under the provisions of Act 75 of the Session Laws of Hawaii, 1939.

Dated at Hilo, Hawaii, this 26th day of June, 1943.

HILO FINANCE AND THRIFT  
COMPANY, LIMITED,

Plaintiff.

By CARLSMITH & CARLSMITH  
and SMITH, WILD, BEEBE &  
CADES,

Its Attorneys.

By /s/ J. RUSSELL CADES.

[Endorsed]: Filed June 26, 1943.

In the Circuit Court of the Third Judicial Circuit,  
Territory of Hawaii

Law 2316

HILO FINANCE & THRIFT COMPANY,  
LIMITED,

Plaintiff,

vs.

GEORGE B. CAREY,

Defendant,

BANK OF HAWAII, and BISHOP NATIONAL  
BANK OF HAWAII,

Garnishees.

ACTION IN ASSUMPSIT WITH GARNISH-  
MENT AND ATTACHMENT IN AID

TRANSCRIPT

Carlsmith & Carlsmith, Smith, Wild, Beebe &  
Cades, Attorneys for Plaintiff.

Willson C. Moore, Cass & Silver, Attorneys for  
Defendant.

(Pages 1 to 18 and first 8 lines of page 19  
omitted.)

Mr. Cades: We will then proceed. In the case in  
chief it has been stipulated between parties that the  
plaintiff is a corporation duly organized and exist-  
ing under the laws of the Territory of Hawaii.

Mr. Moore: Yes, that is correct.

Mr. Cades: It is also stipulated that at all times mentioned in the pleading the plaintiff was duly licensed under Act 154, Session Laws of Hawaii, 1933, which is the Money Lenders Act, and under Act 231, Series D 140, Session Laws of Hawaii, 1937, which is the Industrial Loan Company Act.

Mr. Moore: That is correct.

Mr. Cades: Mr. Tennent, will you take the witness stand?

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### HUGH COPPER TENNENT

a witness for the plaintiff, who, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Cades:

Q. Will you state your name, please?

A. Hugh Copper Tennent.

Q. What is your occupation, Mr. Tennent?

A. Certified Public Accountant.

Q. How long have you been a certified public accountant?      A. Since 1925.

Q. That is you are a certified public accountant under the laws of the Territory of Hawaii?

A. Yes, since 1925.

Q. Will you state whether you have ever acted as auditor for the Hilo Finance & Thrift Company, Limited?      A. Yes.

Q. You have and if so, what period?

A. 1927 to date.

(Testimony of Hugh Copper Tennent.)

Q. And have you acted as auditor for George B. Carey the defendant in this case? A. Yes.

Q. State what period. A. 1932 to 1939.

Q. Are you familiar with the signature of George B. Carey the defendant in this case?

A. Yes, sir.

Q. I hand you eight notes which are numbered as follows: 796, 871, 961, 1006, 1043, 1173, 1234, 1354, all in the face amount of \$23,030 purporting to be signed by George B. Carey and I ask you to examine those. Have you examined those notes, Mr. Tennent? A. Yes.

Q. Can you state whether that is the signature of George B. Carey, the defendant in this case?

A. Yes, it is the signature of George B. Carey.

Mr. Cades: Your Honor, please, I ask that these be marked and introduced in evidence and be marked as an exhibit in this cause.

The Court: That may be received in evidence and marked Plaintiff's Exhibit A.

Mr. Cades: Would your Honor object to calling it A B C D as set up in the petition?

The Court: That is all right.

Mr. Cades: It would be then A to H inclusive. At this point to save time and expense incidental to prove the books and records, the parties have entered into a stipulation with respect to these notes introduced in evidence. That stipulation is as follows: That sheet has been prepared for each note number introduced in evidence and on the sheet is shown the facts that have been agreed to between



(Testimony of Hugh Copper Tennent.)

the parties with respect to each note. These facts are as follows: First, the note number; second, date of the date; third, the date of the loan; fourth, the total loan or face of the note; fifth, the amount of the interest which was deducted in advance; sixth, cash, if any received by defendant; seventh, amount of proceeds that were paid to the Realty Investment Company; next the amount of proceeds credited to pre-existing notes due to Hilo Finance & Thrift Company and thereunder a statement of all payments received by plaintiff and statement of unpaid balance of total loan or face of note and statement of rebate and interest, if there was a rebate of interest. In this connection we would offer as part of this stipulation we would offer these statements and ask that each one of them be marked A1 and B and so forth.

The Court: They may be received in evidence and so marked.

Mr. Moore: That is the stipulation. Your Honor, with reference to that I think the idea of marking them A1 and attaching them to each of the notes would keep them in better order for the court.

The Court: Mr. Clerk, will you attach them?

Mr. Cades: It is further stipulated that the plaintiff has demanded payment of the defendant of the amount as shown and that payment has not been made.

Mr. Moore: That is agreed.



(Testimony of Hugh Copper Tennent.)

Q. Now, Mr. Tennent, will you state what your training has been to qualify you to be a certified public accountant?

A. I was a registered accountant or what corresponds to a certified public accountant of New Zealand in 1909, the actual title being Fellow Public Accountant. It is on that presentation of those facts and my experience and examination papers and so on that I was admitted as a CPA and also a member of the American Institute of Accountants which is the only National body of recognized professional accountants.

Q. Now, Mr. Tennent, in the practice of your profession you have specialized in finance companies and installment sales companies have you?

A. Yes, sir.

Q. Will you state whether or not it is a fact that you have represented or did you represent a substantial number of finance companies operating in the Territory of Hawaii?

A. Yes, I do or have.

Q. Will you state what those finance companies are?

A. Hilo Finance & Thrift Company, Discount Corporation, Service Finance Company. I have been consulted by many others. Those are the three at the present time.

Q. And you act as consultant for many other finance companies?      A. Yes.

Q. And you also have to do with the setting up of finance companies systems?      A. Yes.

(Testimony of Hugh Copper Tennent.)

Q. Are you familiar with the agreement that was entered into between Hilo Finance Thrift Company and George B. Carey for the lending of money? A. Yes.

Q. Will you state how you are familiar with that?

A. All the arrangements of this borrowing were made by me in consultation with Carey and the treasurer of the Hilo Finance & Thrift Company.

Q. Have you acted as, all during the course of this account as auditor for both companies?

A. Right up to 1939 I have acted as auditor for both parties.

Q. Will you state to the court what the arrangement was for the lending of money?

A. The arrangement was that Mr. Carey should borrow a subsequent sum a month with interest deducted which would give him the cash that he needed to finance his business in Hilo.

Q. All right now, calling your attention specifically to the notes which had been introduced in this cause, will you state what the arrangement was with respect to the borrowing represented by those notes?

A. Yes, in the beginning the notes were prepared in Hilo and sent to Mr. Carey for signature. When they returned cash would be sent in. This proved to be a cumbersome arrangement because of the mere delays so that Mr. Carey was given a large quantity of blank notes which he signed when he wanted to borrow and send them to the Hilo

(Testimony of Hugh Copper Tennent.)

Finance & Thrift Company. Whereupon they drew the check or prepared the card, prepared the note card and drew the check or made the payment. There was generally a lag which was shown on the form of a day or two. Sometimes several days between the date of the note and the time the loan was made, but the arrangement made was that there were to be 15 installments on every loan. No loan at any time was for any different arrangement than for 15 months, and these installments were to be paid monthly on the date the actual loan was made. There was some question of the rebate that the interest figured on the face of the note and deducted was according to their regular charge which provided for a rebate after the note was paid according to the, according to the arrangement.

Q. In connection with the payment of deduction of interest in advance will you state to the court what the amount of interest was and how it was computed, do you know?

A. It was computed on the face of the note and deducted. On a \$2330 note, the interest deducted would be \$330.

Q. And the monthly installments according to the arrangement then would be due on the day of the month in which the actual loan was consummated in Hilo, is that the correct testimony?

A. Yes, sir.

Q. And what was the understanding with respect to the rebates of interest specifically in amount?

(Testimony of Hugh Copper Tennent.)

A. The first rebate was according to the regular practice which was \$27.14 per \$1165 note. I think I would like to check that note to see if it was \$27.16. \$27.18.

Q. On those \$1165?

A. On \$1165 which would be on a loan of \$2330, a rebate of \$54.36.

Q. And then was the amount of that rebate increased at a later time, I mean the agreement?

A. Yes, the rebate was very shortly after the beginning increased to be \$82.50 on a \$2330 loan.

Q. Now, limiting the increase to the notes which have been introduced in evidence beginning with the note dated August 31, 1937, what was the agreement concerning the rebate as to those notes in 1937, do you recall?

A. Yes, sir.

Q. What was the amount of that rebate?

A. The rebate agreed to on those was \$110.

Q. That is equal to one-third of the interest.

A. One-third of the prepaid interest.

Q. Will you state what the conditions were upon which the rebate was to be made?

A. The rebate was to be made for regular performance on the note. It should be said that there was not very strict, the few days delinquency in the past had never been considered the cause for denying a rebate.

Q. So that as this note was, taking one note, the first note in the series, as it was executed what was the total interest agreed to be paid assuming that prompt performance was made by the borrower?

(Testimony of Hugh Copper Tennent.)

Mr. Moore: I object to that as incompetent, irrelevant and immaterial. The rebate has nothing to do with this. This is a contract, may it please the Court, calling for payment of certain amount of interest.

(Argument.)

The Court: I will allow the question.

Mr. Moore: May I have an exception?

The Court: Yes.

A. It would be \$220.

Q. That is under the agreement of the parties as you understood it and negotiated. By the way, did you negotiate this agreement for both parties?

A. I did.

Q. And you are familiar with all details of it?

A. I am familiar with all details of it.

Q. Part of it is represented by promissory notes and part of it is oral understanding, that is correct?

A. Yes, that is correct.

Q. And these rebates were actually——

Mr. Moore: May it please the Court, may I have a continued objection and exception?

The Court: Yes, it is understood that you will have a running objection.

Mr. Moore: Very well.

Q. You state whether in fact under the dealings between these parties rebates had been in effect been paid, had been paid prior to the notes in evidence? A. Yes, sir.

Q. They had been. Now, I direct you to a single note taking into examination No. 796, have you at



(Testimony of Hugh Copper Tennent.)

my request—I show you note No. 796 which is introduced in evidence marked Exhibit A and a statement of the facts concerning that note introduced in evidence by stipulation being A-1, I ask you whether you have computed at my request the rate of interest contracted to be paid by the borrower?

Mr. Moore: If his answer is yes, or no, I have no objection.

Q. First answer yes, or no?           A. Yes.

Q. Will you state what the rate of interest is based on the contract which you have testified to?

Mr. Moore: May it please the Court, we object to that as this is a mathematical computation and is not the preference of an expert to testify. It is a matter of mathematical computation that your Honor can figure out on the ruling that is laid down by law and that it is an attempt on the part of the plaintiff here to sue on the prerogative of the court.

The Court: I will allow the question. It won't do any harm.

Mr. Moore: May I have an exception?

The Court: Yes.

Mr. Moore: And to this same line of questioning.

The Court: Yes.

A. Under the Industrial Loan Act a charge of 1 per cent a month deducted in advance is permitted. That rate would be \$349.50. That is on this particular note. However, that is calculated if the note is \$2330, one per cent a month would be \$23.30, 15 times \$23.30 would be \$349.50, the actual inter-

(Testimony of Hugh Copper Tennent.)

est. Deducted in advance was \$330 a little less. If the rebate is deducted the calculation of the interest rate is what is \$220 to the sum borrowed gives a rate of 14.162 per cent per annum.

Q. Computed on what?

A. Computed on the declining balances of perfect performance.

Q. So that as I understand it your answer to the question as to what the rate is, it is a mathematical computation of what the effective rate is on the contract as entered into if perfectly performed. Your answer is 14.162 per cent?

A. Yes.

Assuming that no rebate were allowed and the borrower still performed in accordance with the contract, what would be the effective rate according to the mathematical computation?

A. 21.24 per cent.

Q. Per annum computed on what?

A. Computed on declining balances?

Q. Will you explain to the Court how you made the computation in the first instance of, let's take that one first 14.162 per cent?

A. Yes, supposing somebody borrowed \$20 from me one month and paid back \$10 and owed me \$10 for the account. That is equivalent to borrowing \$30 for a month and the bank rights and calculation are all based on that basis. That is obvious, \$20 was owed for one month and \$10. Now assuming that this note, I have the note in question because it shows the balance so I——



(Testimony of Hugh Copper Tennent.)

The Court: That is the note dated August 31.

A. August 31, 1937.

Q. Maybe I can make it simpler by restating my question. Is your computation of 14.162 per cent if that rate is applied to the actual balance outstanding each month and the payments are first applied on interest and on principal the monthly payments would be sufficient to satisfy that, are they not?

A. That would not arrive at that rate. That particular calculation in taking the balance of the loan each month and adding together making a loan for one month you get the figure of \$18,641.40, that figured on the charge of \$220 gives you the rate of 14.162. I have a pencil and work sheet.

Q. I don't think that is necessary. And, figured the same way on an interest charge deducted in advance of \$330 the rate is what?

A. The rate is the same figured the same way 21.24 per cent.

Q. In other words, I can say that the effective rate is 21.24 per cent. You mean that that is the actual rate of interest contracted to be paid on the actual money in the hands of the borrower for the period of time involved, is that correct?

A. That is on this assumption that you calculated it according to those sums if they were loaned for one month.

Q. Is that method of calculation the same or different than the method of applying all monthly payments first on principal and then on interest?

A. Yes, it is different.

(Testimony of Hugh Copper Tennent.)

Q. To what extent? I mean does it result in a higher rate or lower rate?

A. This would result in slightly lower rate.

Q. Can you state have you at my request made an examination to ascertain whether applying on monthly payments first accrued interest and then principal whether the effective rate on the loan represented by this note is 796 whether that effective rate is or is not in excess of 24 per cent a year, just answer yes, or no?

A. I have made the calculation.

Q. Can you state from your examination whether the effective rate is or is not more than 24 per cent?      A. It is less than 24 per cent.

Q. The ascertainment of the effective rate is an involved mathematical problem, is it not?

A. Yes.

Q. It involves the use of complicated mathematical formula?      A. Yes.

Q. But you have testified that you have made tests so that you can testify of your own knowledge that the effective rate is in effect less than 24 per cent?      A. Yes.

Q. Very well. Now, as a matter of fact from an examination of these loans the repayments by the defendant were not in accordance with the contract, isn't that correct?      A. They were not.

Q. There was always some delinquency as shown by the statements?      A. Yes.

(Testimony of Hugh Copper Tennent.)

Q. In the setting up of the accounts was any charge ever made for such delinquency in addition to this interest contract for in advance?

A. No.

Q. And the amounts as shown unpaid balance due in Exhibits A-1 to H-1 inclusive do you not include any amount of delinquent interest on installment overdue, is that correct? A. No.

Cross-Examination

By Mr. Moore:

Q. Mr. Tennent, don't you know that with reference to this agreement for the purpose of borrowing this money that it could be repaid at any time within 30 days of the due date that is if the installments fell on the 20th if it was paid within 30 days that there was nothing ever come of it, that was the usual practice?

A. There was no such understanding.

Q. You have gone over these accounts, have you not? Haven't you gone over these accounts with reference to the delinquency? A. Yes.

Q. And haven't you found right up until the time that the borrowing ceased that rebates were paid where there was as high as a month and a half between the final payment of the note and due date of the note? A. That is correct.

Q. Wasn't that the general practice right along?

A. That was the general practice.

Q. And at the time these rebates ceased there

(Testimony of Hugh Copper Tennent.)

would be an agreement there to pay a portion or rebate 33 and a third per cent, had there not?

A. Yes.

Q. And didn't that rebate of 33 and a third per cent start about November 1937?

A. The exact date I couldn't say just now but I think that would be probably approximately correct.

Q. And didn't Mr. Carey request you to have the sum of \$1045 rebate of thirty-three and one-third per cent on the notes paid credited to his account?

A. There was as you notice this rebate of thirty-three and one-third per cent was not given on one or two notes.

Q. As a matter of fact there was several notes?

A. Yes, it was not given as between the two parties the delinquency had gotten to be very extensive several months and then the Hilo Finance & Thrift wouldn't give the rebate and of course Mr. Carey took that up with me and I came down to ask the Hilo Finance Company to give Mr. Carey those rebates.

Q. And wasn't the response to that that he would have to pay delinquent interest charged against the interest on the delinquency and then strike a balance from that?

A. The company was very reluctant to paying these rebates. I spent several days trying to arrive at some kind of a settlement on behalf of Mr. Carey and finally the company said okay and they would

(Testimony of Hugh Copper Tennent.)

pay the rebates but they expected Mr. Carey to make good some of this excessive delinquency which had now run for several months. They were willing to pay the thirty-three and one-third per cent provided he made some payment because of all this delinquency.

Q. Wasn't the amount of payment that they requested the one per cent a month on the delinquency, that is where the note was payable on the 20th of June or it was not paid until the last of July they wanted to charge one per cent on that note for that period?

A. No, the company wouldn't specify anything, they wanted a rebate as I recall it if had accumulated or were accumulated on the notes amounting to approximately \$1800 or \$2000. We checked that figure up and their request was for about \$500 and Mr. Carey considered for delinquent interest. However, the calculation was not based on anything particular.

Q. Now, Mr. Tennent, doesn't the time element, this time element coincide that when Mr. Carey ceased borrowing from the Hilo Finance & Thrift was the first time that the Hilo Finance & Thrift refused to allow his rebates?                   A. No.

Mr. Cades: I will object to the question. It is wholly unintelligible. (Argument) I object as to form.

The Court: He answered and said, no.

Mr. Cades: If he understands it, it is all right.

(Testimony of Hugh Copper Tennent.)

The Court: He answered and gave a negative answer.

Mr. Cades: All right.

Q. Now, as I understand your testimony, Mr. Tennent, that all of these loans that were made prior to the bringing of this suit that is during the period covered by the evidence in this case. You know that period what it is?

Mr. Cades: September 1.

Mr. Moore: No, August 31.

Mr. Cades: The date of the loan was September 1.

Mr. Moore: Very well, during that whole period of time.

The Court: What time?

Mr. Moore: From September 1 covering the whole entire period.

Mr. Cades: September 1, 1937, on.

Mr. Moore: That is right.

Q. That all of these loans no matter how you figured were in excess of one per cent per month?

A. No, they were not in excess of one per cent per month.

Q. Well, I thought you testified that the lowest figure was 14 per cent, 14.162 per cent per annum?

A. Yes, that is with interest deductible in advance if you are now saying what was the simple interest rate on the balance, that would be 14.162 per cent, on the declining balances. I have already answered that 14.162 per cent.



(Testimony of Hugh Copper Tennent.)

Q. Is that in excess of one per cent per month, one per cent a month would be 12 per cent.

A. Well, if that is the law, depends on the agreement I suppose.

Q. You say that in one of your calculations you have calculated on the basis of the actual amount received, that is you take in the case of a note of \$2330, take the \$2000? A. Yes.

Q. That you have calculated the interest at 2 per cent a month first applying the payment to interest and then the balance to principal?

A. Yes, sir.

Q. And that you say figures out to a little under 2 per cent? A. Yes.

Q. And on that calculation, Mr. Tennent, how many months does it take to wipe out the principal?

A. That calculation is based on the money going first to interest and then to principal so that the loan at 2 per cent would be wiped out shortly under 15 months.

Q. Wouldn't that be wiped out in 14 months?

A. 14 months and a fraction I think, between 14 and 15 months. Wait a minute, let me get that, yes, at 2 per cent a month and that would be wiped out in over 15 months because there would be more going to interest and less to principal, so I would have to make that correction, more going to interest at 2 per cent, it would take over 15 months to finish the entire principal on that basis.

Q. Mr. Tennent, this agreement under that you say you arranged between Mr. Carey and the plain-



(Testimony of Hugh Copper Tennent.)

tiff in this case that was it, an agreement whereby he was to borrow a large sum of money, was it not?

A. Yes, sir.

Q. And I believe you testified in another case that was to borrow \$67,000?

Mr. Cades: I object to that as to form. (Argument.)

Q. Didn't you testify in the District Court of Honolulu that this arrangement was for the purpose of borrowing \$67,000?

The Court: What was the title of the case?

Mr. Moore: The Realty Investment Company, Limited vs. Carey, or Carey vs. Realty Investment Company.

The Court: Do you recall testifying in the case?

A. Yes, I recall testifying.

Q. Well, is that correct, was the agreement to lend \$67,000 over a period of time?

A. The first agreement was to borrow about \$12,000 or \$15,000 in 12 monthly borrowings and then that loan, those were to be paid off, they were to be small borrowings. I have a budget which shows that.

The Court: You can refer to anything.

A. Yes, but along the line the borrowings were increased.

Q. I call your attention to this. Do you recall being asked in this case that I am now speaking about where you testified before the District Court of Honolulu, will you state to the court what your

(Testimony of Hugh Copper Tennent.)

duties were about arranging credit for Mr. Carey? Do you recall being asked that question?

A. Yes.

Q. Did you answer as follows: "The first request was to prepare a financial statement of Mr. Carey's business. Mr. Carey had applied to the Discount Corporation for finances, showing that loans were made by the Discount Corporation but they loaned only apparently small amounts, as far as I can recall. They were doubtful about the account. It wasn't very long before this credit which the Discount Corporation made available was used up and Mr. Carey had a branch in Hilo and I think it was at my suggestion that he might see whether the Hilo Finance & Thrift Company would loan him some funds. At any rate Mr. Carey and I discussed it and on one of my visits to Hilo I approached the Hilo Finance & Thrift Company."

Is that right? A. That is correct.

Mr. Cades: I move that answer be stricken and I object to the question on the ground that it is wholly improper to bring in the transcript of another proceeding. (Argument.)

The Court: You can see if he is impeaching. This witness hasn't stated anything to the contrary.

Mr. Moore: He has stated that the arrangement was around \$12,000 and we want to show it was prior to his \$67,000.

A. May I explain that figure?

Mr. Cades: Just one moment. If the idea is to

(Testimony of Hugh Copper Tennent.)

impeach this witness he has a perfect right to have introduced in this cause and I make no objection that this is not a certified copy. In fact I am willing to stipulate that this whole transcript go into evidence. I think it is doing this witness injustice and also the court to take two or three questions out of there. I submit to the ruling of the court.

Mr. Moore: May it please the court, that is not the purpose of this at all. I asked him with reference to the arrangement he had made. (Page 11 and 12.) (Argument.)

The Court: I will allow the question. Do you understand the question now?

A. If you wanted \$67,000 and borrowed \$1000 a month naturally that would all add up to a large sum. The question should be asked me what was the total limited borrowings or the total amount. If you asked me how much money went through my bank account in a month it might be a large sum but my earnings would only be \$500.

Q. I asked you a question a little while ago how much the agreement was to borrow and you said \$12,000. Now, do you want to change that testimony?

Mr. Cades: Your Honor, that is an unfair statement. As I understand the evidence, the evidence was that from time to time they borrowed in monthly borrowings and the question was, what was the amount of the loan at one stage and he said, \$12,000. I submit if your Honor will examine

(Testimony of Hugh Copper Tennent.)

the transcript which he is trying to get in here in an oblique manner, you will see that the questions and answers will only show that the borrowings were \$67,000. (Argument.)

Mr. Moore: May it please the court I am willing to read this answer and if I understand English it bears out my argument.

The Court: Will you ask him that question again?

Q. The next question and answer: "The Hilo Finance & Thrift Company agreed to lend \$67,000 over a period of time against contracts which were contracted for on the Island of Hawaii." Now, did you make that statement or not?

A. It is in the transcript. I imagine that is what I said.

Q. And wasn't that the agreement?

A. The agreement was to borrow monthly certain sums. The limit of the outstanding balances was determined by the first agreement. Now, if they reached—I can't put my hand on——

Q. Well, you stated here they agreed to lend this amount, is that true or is it?

A. They agreed to lend \$1165 a month providing he put up sufficient collateral for recovery.

Q. Was there any agreement by the Hilo Finance & Thrift Company to lend \$67,000 over a period of time against contracts which were contracted on the Island of Hawaii?

A. I think that is putting a wrong connection on it. These loans went on for month after month

(Testimony of Hugh Copper Tennent.)

amounting to \$67,000. I assume—I haven't the figures before me but that looks like the right figure.

Q. Well, you certainly wouldn't state under oath, Mr. Tennent, that they agreed to loan this sum if that wasn't true?

Mr. Cades: I object, he can correct it, ask him and he can answer it.

The Court: Yes, that is right.

Q. Well, did you make this statement?

A. I assume if the statement is there.

Q. Let's read it then right there. (Giving the witness the transcript.)

A. Mr. Carey presented a budget which provided for borrowing so much every month and provided for repayment. Now, the total amount of the borrowings that appeared on the budget would not be that amount. That is he would borrow monthly that amount or approximate. That is a round figure and not that I had any figures in front of me to state. The figure may be over \$10,000 and so on. The arrangement was to borrow so much a month and to pay so much a month but when I stated here that the amount under the first arrangement was that he wouldn't be indebted to that company in any month over a certain amount which Mr. Carey had collateral put up.

Q. Now, you say, Mr. Tennent, that you have represented a number of finance companies here in the Territory as an auditor, is that correct?

A. Yes.



(Testimony of Hugh Copper Tennent.)

Q. Now, you are familiar, are you not, with the various transactions between the Hilo Finance & Thrift Company and Mr. Carey?

A. Yes.

Q. And you know, do you not that in the commencement of the borrowing from the Hilo Finance & Thrift Company that note for \$2330 was executed of which \$2000 was turned over to Mr. Carey, \$330 was retained as pre-paid interest. You know that, do you not?

A. As interest deductible in advance on \$2330.

Q. Call it what you will. And then the succeeding notes were used, were they not, first they deducted the interest in advance, second, they paid the first installment due on the first note, that is the second note.

Mr. Cades: Your Honor, please, I object to this question but I want to get something straight with counsel. There was no part of the stipulation that counsel would prove his counter-claim under the guise of cross-examination on our case in chief, When it comes to putting on the evidence as to the existing counter-claims on the notes preceding September 1, 1937, I have no objection of Mr. Tennent being called as a witness to testify anything that is pertinent but in order that this record may have some sort of order I shall object on the ground that the inquiry is not any response on the direct examination and is something they will drag out. (Argument.) I don't think that it is a fair way of presenting this case to get into the details of the matter.

(Testimony of Hugh Copper Tennent.)

Mr. Moore: May it please the court this witness has testified that he was the auditor for both; that he made arrangements and that he is familiar with the transactions from both sides. He has testified to the execution of 8 notes here which are 8 in this transaction and I submit, may it please the court, if they put him on and he testifies that he is familiar with these transactions, we can cross-examine him solely on the question of credibility as to whether or not, not taking in any other reason but solely on the credibility.

The Court: I will allow the question.

Q. And then the third note, the same deduction of interest was made and there was another deduction of two installments that is one of them due on the first note and then one due on the second note. They were applied to those two notes, is that correct?

A. That was not the universal case but that is the frequent case.

Q. And you say that is not universal. That is, there was notes was there not thereafter which the whole amount of cash was turned over to Carey?

A. Yes.

Q. That is what you mean by the exception?

A. Mr. Carey wanted additional money he asked for all the cash. On occasion when Mr. Carey had funds he paid the notes that were due.

Q. And now, Mr. Tennent, there was a period where there were fifteen of these \$2330 notes outstanding?

A. Yes.



(Testimony of Hugh Copper Tennent.)

Q. Where a new note would be executed and the entire amount of that note plus \$330 in cash which was paid by Mr. Carey to the plaintiff which were used to meet the installments due on the 15 prior notes?

A. On the level \$2330 which is usually the note after deducting interest, the balance in many cases was applied on other notes.

Q. And if there was 15 notes outstanding would payment on each note, each month was \$155.32 and 15 times that equals \$2330?

A. Yes, with a few cents difference.

Q. So that when 15 notes were outstanding and monthly installments were due, the execution of a new note of like amount because of the deduction of \$330 interest paid in advance was \$330 short of the amount needed to meet those installments?

A. Yes, in addition let me finish. There was a rebate of course due which the company remitted, there were two transactions on each one of those to the other things that you have said.

Q. But in order, in case where we are talking about the sixteenth note, you have 15 outstanding and we talk about the 16th note where the whole amount of that note is applied to the payment of installments on the 15 preceding notes, it would take \$330 in cash no matter where you got it, whether it was from rebate or actual dollars to meet the installments due on the pre-existing 15 notes?

A. Yes, sir.

(Testimony of Hugh Copper Tennent.)

Q. Mr. Tennent, did you ever figure out for the purpose of these calculations that you had with your own interest, did you ever figure out what the actual amount of cash at a given time had been received by Mr. Carey?

A. I figured those calculations every kind of way.

Q. Now, did you ever figure out that when there were 15 notes say, the first series of 15 notes of the \$2330 type, that there was about \$69,000 actual cash paid to Mr. Carey. I withdraw that and change that. Did you ever figure out, figuring on the basis that there is notes here of two kinds \$2330 and \$1165. Did you ever figure out on the amount either of the \$2330 or \$1165 if there was 15 outstanding, how much actual cash would be turned over to Carey on that amount of notes?

Mr. Cades: Your Honor, I object to the form of the question because it depends on what time he is talking about in these series and the stipulation we have agreed upon show all these facts. (Argument.)

The Court: I think we will save time. He can answer the question. If you don't understand any of these questions, you speak up.

A. This is somewhat like the other ones as to whether Mr. Carey contracted for \$67,000 or for 15. This one I couldn't possibly answer without—

Q. I am just asking you if you have ever—  
Mr. Cades: Let him answer.

(Testimony of Hugh Copper Tennent.)

A. I couldn't possibly answer without the notes in front of me and the work sheets and so on. As I understand it is how much cash would be out that Mr. Carey would have.

Q. You misunderstood my question, Mr. Tennent. I am asking you if you have in your various calculations figured out how much cash would be advanced to Mr. Carey on the basis say of 15 \$1165 notes—there is two kinds here—have you ever made that calculation.

Mr. Cades: Your Honor, please, I object to the form of the question. Any response can't be responsive to that question. (Argument.)

The Court: Do you understand that question, Mr. Tennent?

A. 15 notes of \$1165 would be sixteen or seventeen thousand. As I say it is like the previous thing how much would you borrow \$67,000 or 15. He would have borrowed on 15 notes actually sixteen thousand odd. But the question is how much cash would Mr. Carey have out of that at the top figure, at the maximum figure?

Q. That is on this basis. We have gone through and I ask you questions here I go that there are times during this transaction or during this period of time covered by these transactions where there are 15 notes out? A. Yes.

Q. And Mr. Carey in the first note, say of the \$1165 type gets in cash \$1000. The next note \$165

(Testimony of Hugh Copper Tennent.)

is applied to the installment due on the first note and Mr. Carey gets the difference and then you carry that on out to 15 notes so that when you get down to the 14th or 13th note, Mr. Carey I have asked you if you have ever figured that out so that when you get down to the 13th note Mr. Carey only got about \$68. Did you ever carry that out in your calculation?

Mr. Cades: I object to that.

The Court: That is a proper cross-examination. He is an expert here.

Mr. Cades: May I have an exception?

The Court: Yes.

Q. Here we are talking about 15 notes?

A. Yes.

Q. There has been no payment in cash on any of them, not one nickel. The only applications to the installments of the notes have been by credits from the succeeding notes, that is No. 1 note there is a \$165 deducted as prepaid interest and \$1000 goes to Mr. Carey. No. 2 note \$165 is deducted as prepaid interest \$77.66 credited to the first installment of No. 1, the difference sent to Mr. Carey or given to Mr. Carey in cash. The third note there is two times \$77.66 or \$155.32 which is credited to the second installment to the first note and first installment and to the second and carry that on down through until you get the 15 notes. Have you ever figured out a place in that series of 15 where Mr. Carey gets nothing, on what note?

A. That has been figured out.

(Testimony of Hugh Copper Tennent.)

Q. And do you know or don't you know that on the 14th note in a series of that kind Mr. Carey would get nothing?

A. He would get nothing on the 15th note is that what you mean and he would get—I want to have my pad and pencil so that I can see. I know he would get very little on the thing.

Q. Maybe this will help you. (Showing witness a sheet of paper.)

Mr. Cades: If it satisfies counsel to take his time in a case like this I am perfectly happy, go ahead and read the question so that he can answer intelligibly. (Argument.)

The Court: You understand the question, Mr. Tennent?

A. Yes, I understand it.

Q. It is just simply a question of calculation. Now, you go ahead and figure it out.

A. That is right, on the 14th month you get none.

Q. I show you an adding machine tape so that you will check those figures to make sure that they are all on.

Mr. Cades: May I see it?

Mr. Moore: Yes, surely.

Mr. Cades: What is the question?

Q. He has figured out the figures here that appear, that on the first month the defendant would get \$1000, second month he would get \$922.34, the third month \$844.68, fourth month \$767.02, fifth month \$689.36, six month \$611.70, seventh month

(Testimony of Hugh Copper Tennent.)

\$534.04, 8th month \$456.38, 9th month \$378.72, tenth month \$301.06, 11th month \$223.40, twelfth month \$145.74, 13th month \$68.08 nothing the 14th or nothing the 15th.

A. Except the 15th he gets the rebate coming in.

Q. That is rebate start coming in on the first note?

Mr. Cades: We would be willing to stipulate that that is mathematically correct.

Q. All right, now if he doesn't pay these notes on their due date then he isn't entitled to the rebate, is he?

A. According to the practice done here in Hilo, which is not too strictly interpreted but under the contract he was not entitled.

Q. So that in order to get a renewal thereafter he had to pay \$165 a month, did he?

A. Each time he borrows \$1165, undoubtedly interest of \$165 is deducted and went along on that basis.

Q. By the way, Mr. Tennent, did you check the tape so that the figures on that tape I want to get that final figure as against the ones there to make sure that they are all the same figures.

A. Those are the same figures.

Q. Showing a total of the amount which would be received under a series of notes like this one would be \$6,942.52?

A. Yes, sir.



(Testimony of Hugh Copper Tennent.)

Q. Now, Mr. Tennent, did you ever figure what rate of interest \$165 was with respect to \$6,042.52 for one month?

A. There is a rebate to follow.

Q. I am saying here that if the thing is not paid on time and he isn't entitled to his rebate, what is the rate, what would be the rate of interest figuring that the amount borrowed is \$6,942.52 and the amount of interest paid for one month is \$165?

A. The amount borrowed isn't there; the amount is not there.

Q. I am just asking you what would be the rate of interest figuring that that is the amount and the amount paid for 30 days is \$165.

Mr. Cades: Before I raise my objection I would like to know whether I understand the question. The question is, what is the effective rate on \$6,942.52 principal where you pay interest equal to——

Mr. Moore: \$165 a month.

The Court: That is a mathematical question. He can answer it.

Mr. Cades: I just wanted to see what the question was.

A. There is a rebate. Do you want the rebate?

Q. No.

The Court: Forget the rebate now and just leave that out. It is simply just a mathematical question.

A. There is a faulty assumption behind the calculation.

(Testimony of Hugh Copper Tennent.)

Q. I am asking you what the interest rate is. Let me explain it out. I want the interest rate now.

A. If you actually pay \$165 a month for \$6,942.52, that is what you borrow and you pay \$165 a month for it, that would amount to 28.5 per cent. There are innumerable methods of calculation and I would like to study this over at lunch time.

Q. May I, just so that you can study another one over the noon hour and when you get back to continue, just a couple of questions on this particular line. Now, you will notice in this calculation that I showed you that commencing with the 14th month the borrower did not get anything and then there is still 15 months to go. Throwing out the question of rebate, that is, he hasn't paid them on time and he isn't entitled to it and also figure out what the rate of interest would be on the 15th month, where you have to do in the borrowing there is still more added to it, and there is nothing more given to the borrower because the prior notes eat up all he has got and he pays another \$165. See if there is any difference there on the 15th.

The Court: The court will take an adjournment until 1:30 p.m.

(After the noon recess, all parties to the proceedings being present, the following testimonies were taken:)

Q. Now, Mr. Tennent, you told us just before recess that this figure \$6,942.52 on a series of notes,

(Testimony of Hugh Copper Tennent.)

15 notes of \$1165 each that when the 14th note was executed, the defendant would get no more cash from the 14th note but would have received from the prior notes, the prior 13 notes this figure of \$6,942.52 and when he executed the next note there was deducted \$165 as prepaid interest and figuring that, taking the figure \$165 as the rate of interest for 30 days on \$6,942.52 that that would run 28.5 per cent. Now, let's go to the 15th note. On the 15th note he would not get any more cash, would he?

A. No.

Q. And there would also be prepaid interest deducted of \$165, would there not?

A. Yes.

Q. And besides that there would have the \$77.66 being paid on the last installment of the first note, would there not?

A. Yes, sir.

Q. So that in order to keep these notes in status quo he would have to put up \$242.66, would he not?

A. No.

Q. Well, he would have to put up——

Mr. Cades: You can explain anything if you want to.

Q. You would have to put up \$77.66 to pay the last installment on the first note, would you not?

A. That would be paid out on a new note. It would not come out of cash. Assuming your procedure it would be \$165 paid every month in status quo and it would go on indefinitely otherwise——

Q. Now, Mr. Tennent, I will refresh your recollection. We showed you these figures this morning and this is one showing the actual cash and

(Testimony of Hugh Copper Tennent.)

on the basis of \$1000, this is the amount which is not prepaid interest. On the 13th note the man would get \$68.08, would he not?      A. Yes.

Q. And there would be \$931.92 that was credited to installments of this series that is to meet the installments and when you got to the 14th note the borrower would get nothing and it would take \$1009.58 to meet the installments due on the prior notes, would it not?

Mr. Cades: That is still a continuation of the hypothetical question?

Mr. Moore: Yes, that is true.

The Court: Yes, you may proceed.

Q. Is that correct?

A. So far as the 14th.

Q. Now, when you come to the 15th, Mr. Tennent, you have one more installment to meet then you had on the 14th?      A. Yes.

Q. And we know that the installments on this sort of note are \$77.66?      A. Yes.

Q. And when you get to the 15th note that installment is not only \$77.66 short to meet the prior installments but also \$9.58 more than that?

A. Yes.

Q. But forgetting the \$9.58 you have prepaid interest from your \$1165 note deducted in advance and then you haven't enough funds or realization out of this 15th note to pay the last installment on note No. 1 and that last installment on note No. 1 is \$77.66, is it not?

A. Yes, but you are adding you say premium

(Testimony of Hugh Copper Tennent.)

for one month renewed that is not a cash payment. You are on one hand you are talking about the actual cash out. Now, you are combining down there a premium which is not cash out with \$77.66 which is cash. You can't do that.

Q. All right this figure here of \$6,942.52 in a series of 15 notes is all the cash that is advanced to the borrower where the installments on the prior note are taken care of by the application or the credit of funds from the note that you borrowed, the new note as we will say?

A. Yes, that is correct.

Q. So that when we get down to the 15th note you get a situation where you haven't enough funds from the realization from the 15th note to meet the installments due on the prior note, don't you?

A. Yes.

Q. And with exception of this small figure of \$9.58, which was thrown out of the picture you have to have the amount of this last installment of the first note, do you not? A. Yes.

Q. So that in addition to the execution of the 15th note you must put up \$77.66 to keep the 15th note's current, is that correct?

A. That is correct.

Q. Now, did you ever figure out the rate of interest, taking the amount as \$6,942.52 and the amount of interest paid for one month as \$242.66?

A. No, I never have and never will.

Q. All right, you figure that out for us?

A. That would be foolish to figure it out.

(Testimony of Hugh Copper Tennent.)

The Court: Disregard the case and its application to the case and just figure it out as a mathematical question.

A. Pretty nearly 42 per cent.

Q. 42 minus then?           A. 42 minus.

Q. Now, if your series of notes would continue, this would be the highest level that it would get at by paying in cash the last installment of the 15th preceding note; it would keep it at that same level, would it not?

A. There is one fallacy that I have to point out there.

Q. Will you just answer my question?

A. All right.

Q. Answer this question and any fallacy you can point out later. This has got nothing to do with the fallacy right now, this question.

A. Well, if you work at that calculation omitting the fallacy that would——

Q. All right, now Mr. Tennent, supposing we take another situation here. I think you have the note on the pad there. We found, Mr. Tennent, that Carey in a series of 15 notes received in actual cash \$6,942.52.

Mr. Cades: Now, I will object that this is the first time that Carey's name has been interjected. That is an inaccurate restatement. Make it X.

Q. All right. We will find on 15 notes that the borrower received in actual cash \$9,642.52. Now, in a series of 15 notes, of course there is 15 times \$165 deducted as prepaid interest.

A. As Interest deducted.



(Testimony of Hugh Copper Tennent.)

Q. And that of course on the 15 note there would be one installment paid, would there not? When you get 15 of them there would be one installment left on the first note when you got your last note? A. No, 15 notes, you are right.

Q. So that it would be 15 times 165 less \$77.66, 165 times 15 that is \$24.75 and the installment is \$77.66, that is rebate interest deducted less one installment would be \$2397.33. Now, then you said there was an agreement here whereby the largest rebate to be allowed was thirty-three and a third per cent? A. Yes.

Q. That would be one-third of this figure would it not of \$2,397.33?

A. One-third of the figure before you deducted something from it, one-third of all the interest that would be 24 something down there.

Q. Supposing we put this one-third of \$2475 that would be \$825, that is correct? A. Right.

Q. And that would be \$1572.33, would it not?

A. Yes, sir.

Q. Then now, Mr. Tennent, you say that the arrangement was that Mr. Carey was to pay this amount of interest on the money borrowed less the rebate. Now, we find the actual money received is \$6942.52.

Mr. Cades: Your Honor, please, counsel is testifying——

Q. Assuming that, those two figures total \$8,514.85. Now, under this agreement wasn't this all the money that, taking this hypothetical question as

(Testimony of Hugh Copper Tennent.)

put to the terms of the agreement that you have, isn't that all that was due? Wouldn't that be all that was due at the end of a series of 15 notes?

Mr. Cades: If your Honor, please, is this a hypothetical question?

Q. It is a hypothetical question that on 15 notes with this actual money received this amount of interest deducted in advance less rebate if this figure here. Say that the rate of interest for

Mr. Cades: I am not sure whether I understand the question well enough to object to the question.

A. Yes.

Q. Mr. Tennent, taking the last figure I gave you on the other side which is \$242.66, that is this figure here. Say that the rate of of interest for a month, that is not the rate but the amount of interest for one month is \$242.66, can you figure out what that rate of interest is?

A. The rate would be 34 per cent but I should say that there is a series of falacies if I could show you.

Q. Is that plus or minus? A. Plus.

The Court: Are you all through, Mr. Moore?

Mr. Moore: Yes.

The Court: Will you go ahead and explain the falacy? May I use the blackboard?

The Court: Yes, go ahead.

A. There is no question but that this was the actual cash under this hypothetical example that Mr. X would receive, and that is what had been owing let us say on the 13th month, but you have

(Testimony of Hugh Copper Tennent.)

got \$1000. That is, assume that we are talking about money. We are not talking about notes. The notes were \$1165, in following your hypothetical example down there was \$1000 and the next month X would get \$922.34, and he had \$1000 for his first month. The second month he gets \$922.34, so that is the equivalent of \$1922.34 for one month that he has had. Next month he gets \$844.68, which is the equivalent of \$2,767.02 for one month. He has had that for one month and he has had that for one month. I would say \$77.66 is coming off here all the time because \$77.66 is being applied on the notes. In the first month X gets \$1000; in the second month he gets \$922.34. So the actual money he has had in the second month is \$922.34, and he still had the thousand from the first month. So if you reduce this all to one month he would have \$1,922.34 for one month. Next month he gets \$844.68, which means that he has \$2,767.02 for this month when he has that \$1,922.34 and so on until we come to here he has the \$6,942.52, but he has had all these sums for these months that is equivalent to and of \$62,731.76 for one month. Now, up to that point the finance company hasn't had a dime. They have been paying out all the way along. They have paid out what is equivalent to \$62,731.76. We are reducing it for interest calculation, the same as you would for one month. That is equivalent to a loan of \$62,000.00 for one month. That is in 15 months these various sums have been loaned. All right, at this point with some little difference due to a few dollars as you

(Testimony of Hugh Copper Tennent.)

pointed out before the installment due, the company gets \$165. Now, in this calculation you assume that this interest should be applied to this sum for the month which would give a rate of 28.5, but what about all these sums that have been running along? We have \$62,731.36 loaned for the equivalent of one month, and on this 14th note here the first we are talking of cash here in notes, the first cash comes in which comes back to the Y, the finance company, so obviously this calculation isn't correct as it has to take notice of what has gone before. If there has been all this amount loaned in 15 months before hand and nothing has been coming in cash, the first cash that comes in has got to take into consideration all this. As a matter of fact, you cannot use that calculation because it ignores what really happened. It is true that after each month \$6,942.52 was borrowed and \$165 extra was paid and it was repaid back in bulk that month you would get a rate like 28.5. There is absolutely no, it has not any relationship to what really happened as is shown right here so that you can't apply that calculation at that point. One might ask here \$165 if this goes on every month 15, 16, 17, 18 right along and the amounts are being applied to prior notes, the company Y would be getting back \$165 a month, how are you going to apply that \$165 to principal or are you going to apply it all to interest until it catches up or are you going to apply it partly to interest and partly to principal. All those questions come in in fixing an effective rate. Now, let us come down to this calculation.

(Testimony of Hugh Copper Tennent.)

Mr. Cades: The witness refers to the calculation of the rate of interest at 42 per cent.

Mr. Moore: Indicating the one on the note 15.

Mr. Cades: Indicating on the blackboard the highest question of the note 15.

A. How can you miss. We are talking here of cash. We are not talking of premiums but we are saying that at this point the money, no more money is going to X but Y is now starting to get something back. Now, at this point how can you add a premium to a cash. We have ignored the premiums all through all the amounts deducted in advance. We have ignored them all through and now we add them in and mix it up with the cash item and say this is an amount of interest. We can't mix those two up. It is absolutely a mathematical impossibility and say that the result is interest.

Mr. Cades: Will you take the witness stand, unless you have some further explanation?

Redirect Examination

By Mr. Cades:

Q. Mr. Tennent, enlarging on this hypothetical question which has been asked you and which has been explained I would like first of all, your Honor, please, I have a copy of this calculation for which I would at least like to mark it for identification, so that it will show on the record.

The Court: It may be. I suggest that you do the same on yours, Mr. Moore.

Q. I refer now on the blackboard, to the figures on the blackboard which has been introduced and



(Testimony of Hugh Copper Tennent.)

marked as an exhibit I for identification, the first column you have the actual amount of cash that is dispersed to the hypothetical borrower, is that correct?      A. That is correct.

Q. On a monthly basis?

A. That is correct.

Q. And one thousand is advanced the first month and \$922.34 the second month and \$844 the third month and so forth, is that right?

A. That is right.

Q. So that at the end of 14 months you have advanced in cash \$6942.52?

A. That is correct.

Q. Now, the hypothetical borrower has had the use of this \$1000 for how many months at the end of 13 months?      A. 13 months.

Q. And he has had the use of \$922.34 for how many months at the end of 13 months?

A. 12 months.

Q. And \$844 for 11 months?      A. Yes.

Q. And your figure of \$62,731.76 indicates the amount of actual dollars that he had the use of for one month?      A. For one month.

Q. So that if you were to take interest at 24 per cent for one month that would in no way reflect in this hypothetical question, is that correct?

A. That is correct.

Q. Let me resort to the actual case and forget the hypothetical question. You testified that the agreement was that interest was to be deducted in advance. A tabulation shows that interest was de-



(Testimony of Hugh Copper Tennent.)

ducted in advance. Does the hypothetical question give any effect to interest deducted in advance?

A. No.

Q. Another matter, doesn't the hypothetical question as answered by you assume that there was an obligation on the part of the lender to lend the same amount each month and an obligation on the borrower to apply part of the proceeds each month to prior existing notes?

A. Yes, sir.

Q. That was assumed?

A. That was assumed.

Q. Under the contract which you have testified was there any obligation on the part of Mr. Carey to borrow or on the part of the Finance Company *this* loan each month?

A. No.

Q. In fact, did it not depend on the state of Mr. Carey's business and the state of the security offered?

A. Yes.

Q. So that at any time during this entire proceeding under the agreement which you have testified of your own knowledge was not Mr. Carey free to go to the bank and to go to any other company or get it out of his own funds if he wanted to.

A. Yes.

Q. And it was purely optional?

Mr. Moore: I object, that question is leading.

Mr. Cades: He is an expert witness and is not going to be influenced by what I have to say to him. He is under oath.

The Court: Try not to lead him.

Mr. Cades: I will do that. I am sorry.

Q. Now, as a matter of fact, in your capacity

(Testimony of Hugh Copper Tennent.)

as auditor for the plaintiff in this case haven't you had occasion from time to time to compute what the effective rate of this and the other loans were?

A. Yes.

Q. Did you make that computation once or many times?      A. Many times.

Q. Have you made that computation as well for the defendant in this case?      A. Yes.

Q. You have discussed with the defendant the price that he was paying for the money?

A. Yes.

Q. Will you state to the court what the computation was of the effective rate as computed by you over the course of this loan?

Mr. Moore: We object as being incompetent, irrelevant and immaterial.

The Court: I will allow the question.

Mr. Moore: Exception.

A. I should explain a little more.

The Court: Go right ahead.

A. Mr. Carey, in his borrowings from the beginning didn't understand these rates. He had an accountant and in the beginning we discussed the rates and their cost to Mr. Carey. As time went on Mr. Carey got more and more confused with these rates. Then there were frequent discussions which led to asking for increased rebates. I frequently pointed out to Mr. Carey that his borrowings from finance companies expressed in terms of cash amounted to 16 per cent or thereabouts. That used to show out on his auditing books. The 16 per

(Testimony of Hugh Copper Tennent.)

cent naturally reflected rebates and so on. It was just the figure that showed up at the end of the year. I would like to carry further out of a previous question when Mr. Moore asked me whether any rate for delinquency had been discussed. The Hilo Finance & Thrift Company had agreed to this thirty-three and a third but a time came when the repayment of the notes Mr. Carey ceased paying for two or three months and the rebate was not allowed him. This produced some friction between those two, Mr. Carey and the company. When I became aware of it—which was some time after it had occurred—I went down to see what I could do to adjust matters. The company was very reluctant to giving these rebates and for two or three days declined to do it, but finally the treasurer told me that he would grant all the rebates right up to date including the loans that were still running provided Mr. Carey made some offer on his side. The rebates amounting to roughly \$2000 at that time as far as my memory goes, and I suggested to Mr. Carey that he offer him \$500 on behalf of this delinquency which had now run to many months on notes.

Q. Are you referring to notes prior to September 1, 1937, or after?      A. Mostly prior.

Q. Prior to September, 1937?      A. Yes.

Q. Was any agreement arrived at with respect to the rebates between parties?

A. No, Mr. Carey conceded that he should be allowed full amount of rebates even though the final due date had long passed on these notes and that

(Testimony of Hugh Copper Tennent.)

he should not make any payment. He did later and he offered to make a small payment which was, if I recall, a hundred or a hundred and fifty dollars and he telephoned that to Hilo and it was accepted.

Q. But under the agreement as you have testified to here were those rebates repayable or not repayable under the original agreement? Were they repayable or not repayable under the terms of your original agreement?

A. They were repayable under the terms of the original agreement providing the payments were kept up to date.

Q. And they had not been? A. No.

Q. Therefore were they not repayable?

A. Yes.

Q. And what you did was to act as a delegate and get an adjustment on the agreement?

A. I was trying to get these two people satisfied. They were both friends of mine and I was trying to get them satisfied.

Q. But no agreement resulted from your efforts?

A. No agreement resulted from my efforts.

Q. Referring to the notes from September 1, 1937, on and omitting any reference to the rebate I am asking you whether you have computed what the interest would be if the maximum of two per cent per month were charged computed on the declining balances?

The Court: You are just referring to the notes that are the subject matter of this suit?

(Testimony of Hugh Copper Tennent.)

Mr. Cades: Yes. A. Yes, I have.

Mr. Moore: On this point I presume that my continuing objection goes on.

The Court: Yes, sure.

A. (Witness at blackboard): Take this calculation I am making a note of \$1165 because \$1000 is very easy to follow it. Everything is doubled up for \$2330. It is the same thing only doubled up.

(A recess of five minutes was had, after which time all parties to the proceedings being present, the following testimonies were taken:)

Mr. Cades: Your Honor, please, the witness is demonstrating the effective rate in connection with a note on which \$165 is deducted in advance on \$1165 note and I should like to have his calculations which are on the blackboard and they have been reduced to this exhibit marked for identification.

The Court: That may be marked the next letter in order.

Q. The witness is now referring to Exhibit J for identification. Go ahead.

A. This calculation is no different from the ordinary bank figuring on a loan. If one borrows \$1000 from the bank and paid so much every month, the bank deducts some interest and applies the rest to principal. The interest deducted determined by the rate. This is hypothetical but does show the highest rate that can be considered under any method of calculation to apply to this type of transaction. If, for instance we applied this \$77.67 to \$1165, that



(Testimony of Hugh Copper Tennent.)

being the note, we would get a different result. We would get a lower rate because of the bigger principal amount. However, this one we have come down to see if we take the thousand dollars, just what the interest is. Now, I have taken two per cent a month because two per cent a month would bet twenty-four per cent per annum. The first payment on this 1165 note being of which 1000 the borrowed had in cash first repayment is \$77.67. The interest at two per cent a month would on that thousand would be \$20. One per cent would be 10; two per cent would be 20. So we take the 20 for interest and apply \$57.67 to principal and it gives \$3942.33. Next month a similar payment, the interest at one per cent per month would be 9.42 but double that up and we get \$18.85, that is just twice this sum with a cent added. The third month \$77.67, the interest is now applied on this remaining principal which at two per cent month gives \$317.67, leaving 60 would be deducted and we go down to \$823.51, same next month interest two per cent \$16.47 two times that figure, leave 61.20 to come off principal. Fifth payment same thing two per cent of this sixth payment same thing. Now, this goes right down to the 15th payment. On the 15th payment at 2 per cent the last amount you go to interest would be 1.57 77.67, would go to principal. This total repayments make it \$1165, the last payment being five cents less. In your calculation you use \$77.67 and I used \$77.67 but since we are one way one time but the last you are one in the other.



(Testimony of Hugh Copper Tennent.)

I am just drawing attention to that. Anyway 1165 is paid back as provided by the note. The interest at two per cent is amounted to \$167.74, if you use and base it on 1000 cash with a showing that this debtor if he borrowed this way still owed \$2.74. In other words he had \$2.74 more to pay and he had paid \$167.74 interest, which is \$2.74 more than was actually paid than the \$2.74 more than the 165 up here, showing that that rate must be below two per cent a month. There is a calculation that gives you the exact rate but this is so easy to demonstrate that it is used because you can see the application of the two per cent.

Q. Mr. Tennent, you have demonstrated that in this loan the amount charged in this hypothetical loan is less than two per cent a month. Now, were you familiar with the bank examiner of the Territorial office in charge of the administration of the Loan Company Act, is that correct?

A. Yes.

Q. In your professional capacity as auditor, have you had occasion to discuss the computation of interest with the bank examiner?

A. Very frequently.

Q. The bank examiner in fact is charged with the duty of examining the books and records of the finance companies to see if they comply with the law?

A. Yes.

Q. And has he discussed frequent rates with you?

A. Yes, frequently.

Q. Will you state to the court whether the

(Testimony of Hugh Copper Tennent.)

method of computing interest in the case at bar was or was not in accord with the manner prescribed by the bank examiner?

Mr. Moore: Objection, it is incompetent, irrelevant and immaterial and for the reason that if the bank examiner agrees to certain rate of interest, which is usurious under the law what the bank examiner says as to what is proper, is immaterial. This court isn't bound by what the bank examiner finds or what the examiner thinks.

Mr. Cades: (Argument.)

The Court: I will allow the question.

Mr. Moore: Exception and any other questions along this same line, continuing objection and exception.

The Court: You may have it. Will you answer the question first and then explain it.

A. Yes.

Q. Do you want to explain your answer. You seem to be worried?

A. Delay was due to the fact that the bank examiner did not officially explain his rates until 1939 so far as putting out any publication when he required all finance companies under the then act to display on their counter what was called the effective rate.

Q. I see my question was very misleading. The witness has in mind effective rate. My question was not directed to the effective rate. I merely was asking you whether the method of making, just leaving aside any question of whether effective rate was

(Testimony of Hugh Copper Tennent.)

ruled out, whether you know of your own knowledge whether this method was in accord with the method prescribed by the bank examiner?

A. Yes.

Q. The required effective rate did not appear until 1939 in the law? A. That is right.

Q. My question was not in with the effective rate. What was the maximum that could have been charged on a loan of 2330, repayable in 15 installments as in the note of September 1, 1937?

A. The amount that could be charged was one per cent a month.

Q. Computed on what amount?

A. On the 2330.

Q. Multiplied by the number of installments?

A. By the number of months, 15 months.

Q. So that the total amount that might have been deducted in advance under his regulation was——

A. I've had it in evidence before. 2330 multiplied by 15 is \$349.50 and on 1165 it would have been 174, if we get down to this example \$174.75.

Q. And the administration of the act by the bank examiner, can you state from your own knowledge whether that was consistent from time to time, it went on the books? A. Yes.

Mr. Moore: We object to that.

The Court: He has answered it.

Mr. Cades: I will bring that in by deposition. I have only one other matter that I want to clear up.

Q. You have pointed out that the hypothetical

(Testimony of Hugh Cooper Tennent.)

question that was put to you on cross-examination about the amount of cash \$6942.52 that is given by the hypothetical borrower and deliberates over 13 months, you have pointed out why that has no application to a loan where interest is deducted in advance. Is there any other way in which that hypothetical question is inapplicable to that contract which you have testified to?

A. The rebates are not taken into consideration.

Q. In a hypothetical case no consideration was given to rebate? A. Yes.

Q. Now, if in the hypothetical case you had to consider the deduction of interest in advance, how would the calculation, what method of calculation would have to be adopted in order to discover true interest?

A. You would have to use this same calculation only basing it on the 1165 and deducting the rebate, a far much lower rate.

Q. In other words, to get true interest where you are permitted to take and you do take interest in advance that is the method that has to be used in order to illustrate true interest as you demonstrate in I? A. As applied on the note.

#### Recross-Examination

By Mr. Moore:

Q. Mr. Tennent, as I understand it you testified on the explanation of the use of this \$6942.52 being actual cash in this received by the borrower in this

(Testimony of Hugh Cooper Tennent.)

hypothetical question, that in each month you had more, the difference between the note and the cash received to find the total amount of money used for one month?      A. Yes.

Q. All right, so when you get down to the bottom here, do you want, taking this \$62,731.76, you say that this represents the amount of money used for one month, is that true?

A. It is equivalent to that amount of money used for one month.

Q. Now, you take this hypothetical question, we have that amount of money used for one month, we have prepaid interest of 15 times 165 which is \$2475. Now, will you figure out for us the rate of interest?

A. Wait a minute. It is not 15. We have only 13 examples there.

Q. Well, make it 13 then. Let's see, you've got 13. All right, take 13 times 165 is \$2145, what is the rate of interest there?

A. I could work that out, but I want to say that these sums would run on for a long while and there are no more loans so that the calculation would not get you anywhere.

Q. But you say this is for one month. Suppose it is 13 months prepaid interest of 165, that is the amount of interest prepaid interest that you have actually paid for \$2145. Now, I want to know, using this as the rate of interest, what the rate of interest is on that figure? It is 41 per cent plus, is it not?      A. Yes.

(Testimony of Hugh Cooper Tennent.)

Q. Divide that by 12 and you get 3 something, do you not?

A. That would give you 41 per cent plus.

Q. And that is about almost three and a half per cent a month?

A. Yes, but I must take you back to my previous statement that you have 2145 is what you have obligated yourself to pay interest but you haven't paid the money back yet. According to the agreement you would have to have another scale of figures, and assuming that he did not pay anything and if he paid installments every month you would get 62,000, you would get double, you would get 125,000 for one month if you remember and those figures would cut your rate down to 20 per cent.

Q. That is another fallacy?

A. That is a fallacy.

Mr. Moore: That is all.

The Court: Any further questions?

Mr. Cades: No.

Mr. Moore: Your Honor, may we have a recess here to check this over?

The Court: All right, the court will take a recess.

(After a brief recess, all parties to the proceedings being present, the following testimonies were taken:)

Mr. Cades: For the purpose of the record we have rested on our case in chief, your Honor.



GEORGE B. CAREY

a witness for the defense, who, being first duly sworn, testified as follows:

Direct Examination

By Mr. Moore:

Q. Your name, please?

A. George B. Carey.

Q. Your business?

A. Sewing machine dealer.

Q. Have you ever had any business dealings with the Hilo Finance & Thrift Company, Limited?

A. Yes, sir.

Q. And those commenced approximately April 1934?

A. Yes.

Q. And as a result of that did you make, execute and deliver a number of promissory notes?

A. Yes, I did.

Mr. Cades: Upon the testimony of the counter-claim subject, in accordance with a stipulation with a motion to strike depending upon the disposition of the demurrer.

Mr. Moore: Yes.

Q. I show you here several documents and ask you if these are the promissory notes that you have signed?

A. Yes, sir.

Q. Will you check through there and see if those were all dated in 1934?

A. Yes, sir.

Q. There are how many of them, Mr. Carey?

A. Nine.

Mr. Moore: We will offer these in evidence, may it please the Court, and ask them to be marked Exhibits 1 to 9 inclusive.

(Testimony of George B. Carey.)

The Court: They may be received and marked.

Q. Now, I show you some other notes here and I will ask you to check and see if you have signed those notes and if they are dated in the year 1935?

A. Yes, there are 8, 1935.

Mr. Moore: May it please the court, we offer these in evidence as Exhibit 10 to 17 inclusive.

The Court: It may be received as the defendant's exhibits next in order.

Q. I will show you another set of notes and ask you whether or not you have signed those and whether those are all dated in 1936, and give me the number? A. 12 notes.

Mr. Moore: We will offer these in evidence, may it please the Court, and ask that they be marked 18 to 29.

The Court: They may be received and marked defendant's exhibits next in order.

Q. I will show you another set of notes and ask you if you have signed those notes and if they are all in the year 1937, and give me the amount or number of notes there? A. Yes, five.

Mr. Moore: We will offer these in evidence, may it please the Court, and ask that they may be marked next in order.

The Court: They may be so received. (30 to 34.)

Mr. Moore: At this time I have already advised counsel that there are 4 notes missing between the last note introduced by the defendant and the first note introduced by the plaintiff. The first is dated May 28, 1937, and is numbered 491 and is in the

(Testimony of George B. Carey.)

sum of \$2330; the next is on June 29, 1937, numbered 614, in the sum of \$2330; next is dated August 1, 1937, and is numbered 702 and is in the sum of \$1165; the fourth being dated July 30, 1937, numbered 712 and being in the sum of \$2330.

The Court: Those notes are they similar notes?

Mr. Moore: They are similar notes, your Honor.

The Court: Have they been paid?

Mr. Moore: Yes.

The Court: And is that so, Mr. Cades?

Mr. Cades: Yes, subject to the agreement. We had at the beginning, we stipulated with counsel that these were in existence and were paid and the detail concerning payments will be submitted in the same form with the details of the notes in chief.

Mr. Moore: With these notes coming in we ask that be marked 1-A and 2-A and there will be four which we will only have a set, your Honor.

Q. Now, Mr. Carey, when you executed and had outstanding 15 notes and you executed a sixteenth, what was the purpose of the execution of that note where you got no further funds?

Mr. Cades: I object. That is supported by nothing. Let's talk about the notes in the case now.

(Argument.)

The Court: I think it is a little indefinite. You can ask him about the agreement. You can go into that and develop it with reference to the 15 notes.

Q. Mr. Carey, will you give us what this agreement was, with reference to these borrowings?

(Testimony of George B. Carey.)

A. You mean by that that you want me to go back to the very beginning?

Q. And come forward.

A. Similar to what Mr. Tennent has testified to or do you want me to start in just on——

Q. What your agreement was and how you corrected this thing out during its existence?

A. Well, the notes were made up in our office in the amount of either \$1165 or \$2330.

The Court: Mr. Carey, are these the notes that are in evidence here; are these the notes you are talking about?      A. Yes.

The Court: That is what we want to know about. Just confine yourself to these notes.

Q. These are the notes?      A. Yes.

Q. And, Mr. Carey, when there were 15 notes outstanding, what did you get the 16th note for?

The Court: Just a moment, Mr. Moore, I would like this to be cleared up a little bit before you get to the 15th and 16th. You haven't shown yet how many notes they had executed on this particular day. Maybe he only executed half of these or find out from him, did he execute all these notes at this one time, that is what I want to find out.

Q. Very well. In the execution of these notes here, were these executed at one same time or different times?      A. Monthly.

Q. That was the usual thing, one note each month?      A. One note each month.

Q. When you executed a note each month, the first note you got a certain amount of money?

A. Yes, I did.

(Testimony of George B. Carey.)

Q. And that is the first note you got there?

A. Well, if the note——

Q. Say, the note is \$1000?

Mr. Cades: I object, your Honor, the first note you are introducing in evidence, what note are you talking about? I insist that you be definite. I don't think that this is right taking the notes. The notes are here and you can ask him, what did you do with the notes. (Argument)

Mr. Moore: (Argument) May it please the court, if there is going to be an objection of this thing at this time I would suggest that we get all the applications in and then we can ask the questions, if that is what they want.

Mr. Cades: It is all right with me. The facts are not in dispute. Your Honor already has a form worked out by both counsel for the convenience of both parties and court. A similar situation will be stipulated to show what has happened to every single note that was introduced in evidence. (Argument)

Mr. Moore: I can go on and take up another phase, your Honor.

Q. Mr. Carey, taking these notes that you have already testified to, three, four, 5, 6 and 7, were portions of those notes applied to payments on prior notes? A. Yes.

Q. Now, in addition to the application of the first amount of these notes to payment on pre-existing notes, did you pay any cash? A. Yes.

(Testimony of George B. Carey.)

Q. Have you a tabulation of that cash paid?

A. Yes.

Q. Is it there? A. Yes.

Q. Is this taken from the records of your business? A. Yes, sir.

Q. Will you let me have that tabulation and is that by year? A. Yes, by year.

Q. Will you give us the dates and amounts of those, Mr. Carey, or if counsel wishes to save time and I will take it and tabulate that and put it in.

Mr. Cades: Your Honor, please, the exhibit that has been shown to me includes a lot of payments, some on notes that are not involved in this litigation and on which we have already stipulated that payments have been made. I don't see how it would be possible to have testimony come in in view of the stipulation that counsel has made that they will affirmatively show and put in a concrete form of all payments that have been made. (Argument)

The Court: It is about 3 or 4 months. Suppose you gentlemen——

Mr. Moore: Here is the situation. May it please the court, this stipulation covers all, that is the sizes of the payments on each note. Now, those payments are made up, your Honor, of two things, one, the proceeds of notes and, two, the actual payment of cash, and of course it is certainly proper in this case to show that a portion of these paid notes were made up by applications of proceeds of further notes and others by cash. So that when we get down to the final solution now he talks about three other



(Testimony of George B. Carey.)

notes, what we intend to do with that, that any cash that he has sent forward that has applied from the three notes that we have been talking about in this case, which are not before the court, that that amount that was applied to those three notes will be deducted. So that we have a perfect picture of two things, which I am certain this court will want to know, first the application of funds from the notes and the application of funds from cash.

Mr. Cades: Your honor, please, I think I can straighten this up so simply. In order to make up a counterclaim, counsel has to show two things, first, is the payment of notes that are in service and second, the amounts that have been paid as a result of criminal usury. There can be no purpose served to come in on a series of notes and try to get in cash payments some of which cash counsel will concede were paid on notes that are not involved in this litigation, and try to jumble these up with the application of payments from other notes. If counsel wants to show what payments have been made on these notes, if he now wants to take those statements and segregate and have Mr. Carey show here cash payments and those on the application of cash received from notes, why there can be no objection on that. (Argument) I object to it because it has no bearing and is irrelevant and immaterial. I will go over this matter with counsel and if it can be made a part of our stipulation, why that can be done.

(Testimony of George B. Carey.)

The Court: It is 4 o'clock and I think you had better get together and if these facts are not disputed and if you can't, I will permit you to go ahead with your case.

Mr. Moore: Is your Honor going to adjourn?

The Court: Yes, we will take an adjournment until tomorrow morning at 9:30. Is that time enough?

Mr. Moore: Yes.

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On the 25th of June, 1943, all parties to the proceedings being present, the following testimonies were taken:

The Court: Let the record show both counsel for the plaintiff and defendant are present. Mr. Moore, would you mind making a statement of your defense; you stipulated a lot of facts, you and counsel and I would like to know what your defense is here so that I can follow the evidence?

Mr. Moore: May it please the court, I think that with reference to going through the ramification I think we had better connect it up on a memorandum right straight through.

Mr. Cades: Your Honor, I don't think counsel has to go into any ramification. I meant laws to find out what the defense is. If they could make a statement as to what they are trying to prove. It is not clear yet what they are relying on as a line of defense.

Q. Now, Mr. Carey, prior to 1933 you were in the sewing machine business over in Honolulu?

A. Yes, sir.

(Testimony of George B. Carey.)

Q. And when was it that you opened a branch in Hilo?      A. In November or December, 1933.

Q. Now, Mr. Carey, when you started your branch here in Hilo did you have finances sufficient to operate that business?

A. No, not satisfactory.

Q. Now, did you make any arrangements for obtaining finances to operate this business?

A. Well, I did through Mr. Tennent.

Q. And who did you make that arrangement with; what did you make the arrangement, with what form that is the plaintiff in this case?

A. Yes, sir.

Q. And what was the agreement with reference to financing this branch here in Hilo?

Mr. Cades: Your Honor, please, I will have to object. Whatever arrangements he made were through Mr. Tennent.

The Court: Well, Mr. Tennent was his agent. I will allow the question.

A. The arrangement was that it was necessary for me to put up sewing machine contracts as collateral security in a ratio of \$2.50 worth of contracts for each \$1 borrowed, and as the sewing machine contracts were paid off to me in the form of collections or if any of them were repossessed, it was necessary for me to supply the Hilo Finance & Thrift Company with additional contracts so that the collateral was kept on a par at all times on that ratio of two and a half.

(Testimony of George B. Carey.)

Q. In addition to this security was there any other security put up?

A. Yes, there was a life insurance policy.

Q. Policy on whose life? A. On mine.

Q. In what amount? A. \$10,000.

Q. Now, in borrowing money to finance this branch what amount if any were you to borrow, what total?

A. Well, there was no limit to it. In other words, it was understood that these loans would be made to me each month as long as I was in a position to supply contracts.

Q. That is collateral? A. Collateral.

Q. As you made a loan each month what did you do in addition to what you have already told us to evidence this loan. Was there any agreement or any writing or anything given?

A. Yes, there was notes signed each time I would make a loan. It would be necessary to send over a batch of contracts of matched contracts to go with the signed notes.

Q. Are these the notes that you have identified here the ones that were introduced by the plaintiff, are these the notes of which you speak?

A. They are.

Q. Now, would the loan of one or two thousand or small amounts of that do you any good in this situation? A. Certainly not.

Mr. Cades: I object. I move to strike the answer for the purpose of making my objection. He has testified with reference to the arrangement.

(Testimony of George B. Carey.)

That is wholly immaterial in the trial of this case.

The Court: I don't think that is right, Mr. Moore.

Mr. Moore: May I be heard on this situation?

The Court: Yes, sure.

Mr. Moore: May it please the court, here is the situation. We have and we say this question is very competent and material for the reason that he had a branch of sewing machine selling agency and of course we need money to support that and not just a little money but lot of money. In other words, we are trying to show that this is a borrowing agreement to operate a sewing machine agency and it is material here as to what amount or amounts we need. That is to show that just a drop in the bucket would not do us any good at all, which would further this oral agreement to borrowing a limited amount of money to operate a branch of the sewing machine agency.

The Court: He testified didn't he, he said as long as he produced collateral, it would not make any difference with these contracts, he would get the amount of money in proportion to the amount he put up as collateral.

Mr. Moore: (Argument.)

The Court: Nobody is contending that as yet.

Mr. Moore: May we have an exception to your Honor's ruling?

The Court: I will allow the question although I am frank to say that I am not too sure.

Mr. Cades: I will take no exception but I do

(Testimony of George B. Carey.)

say in order to have a record the witness should testify what was said and what was done and not his mental intention to bring in collateral matters, it would keep us here a week.

The Court: Go ahead.

Q. Now, after this agreement got in operation, Mr. Carey to begin with where were these notes drawn up, that is Honolulu or Hilo?

A. At Hilo.

Q. And later on?

A. They were drawn up in our office.

Q. Where did you get the forms?

A. They were sent to us in pads probably 50 or a hundred notes to a pad sent to us by the Hilo Finance & Thrift Company.

Q. And these notes were they the ones that are yellow, those are the ones that were sent to you?

A. Yes, sir.

Q. When you executed the note you have testified that you executed the note and then you sent along with it a collateral?

A. Yes, sir.

Q. I will show you some folder here and ask you what this is. Can you tell me what this is, Mr. Carey?

Mr. Cades: Just a moment, I would like to see it.

A. This is a list of the names and style number and serial number of the sewing machine contracts that were pledged to the Hilo Finance & Thrift Company.

Mr. Cades: May the record show that the witness



(Testimony of George B. Carey.)

is referring to a list headed Contract, Hilo Finance & Thrift Company, No. 1674, \$2330. That is what is marked on the top.

Q. Now, is there a letter of transmittal attached to each one of those? A. Yes, sir.

Q. Now, Mr. Carey, was a similar one on notes of the nature that are now in evidence transmitted with that note?

A. Yes. I might add that there were times however when it was necessary to send over collateral where there was no loans made in order to offset repossessions and sewing machine contracts that had paid off thereby lowering the amount of collateral. It would then be necessary to send over a list like this minus a note.

Q. This is to bring up the ratio of your collateral to two and a half per one dollar borrowed?

A. Yes, that is right.

Q. Mr. Carey, will you just take one of those out. It is no use to introduce all of it in evidence. One of those with a letter of transmittal. Now, Mr. Carey, this list and this letter of transmittal this is a copy of the letter that you sent and the list of the contracts you sent? A. That is right.

Q. Now, the actual contracts listed on here what happened to those?

A. Why, they were paid by the Hilo Finance & Thrift Company.

Q. What I am getting at is this, were the actual contracts themselves transmitted with this letter and this list? A. That is right, they were.

(Testimony of George B. Carey.)

Mr. Moore: We will offer this in evidence.

The Court: It may be received in evidence and marked next exhibit in order.

Mr. Cades: Your Honor, have you worked on the admission?

The Court: Yes, I let it go in.

Mr. Moore: May it please the court we have here similar compilations as are attached to the plaintiff's exhibit that is with reference to the number and date and amount of loan. We will ask that these be admitted in evidence and be marked as A-1, B, subject however to checking as to the accuracy of the figures.

Mr. Cades: I think the record, your Honor, should show as my understanding with counsel in fairness to him, that subject to the objection of law, subject to the motion to strike that it was stipulated and agreed between counsel with the respective parties that the facts as shown on each of these slips now offered are facts with respect to the matter indicated therein, namely, the date of the note, the total loan, the interest, cash received, et cetera. Is that the stipulation?

Mr. Moore: Yes.

The Court: It may be received in evidence and marked next in order.

Mr. Moore: Those will have to go as A-1, 2-A, 3-A, and attached to the note.

Q. Now, Mr. Carey, you had correspondence did you not from time to time with the Hilo Finance & Thrift Company?      A. Yes, sir.

(Testimony of George B. Carey.)

Q. As to what these notes that you executed and forwarded to the Hilo Finance & Thrift Company were for?           A. Yes.

A five-minute recess was had, after which time all parties to the proceedings being present, the following testimonies were taken:

Mr. Moore: May it please the court, it has been stipulated that the payments in cash as listed upon this sheet would be testified to by proper witnesses. So in order to save going down through, we will put these cash payments and these cash payments. It is strictly understood our payments are in duplication as recorded on each of those exhibits attached to each note.

Mr. Cades: And one other thing, it was also a part of the stipulation, whereas the sheet shows the payments made by check on a certain date.

Mr. Murray: That is correct, this is just a date of the check and it may have been received days or a variation of days later, that is understood.

Mr. Cades: Let's get the record clear. May I state the stipulation so we won't have any dispute about it. The purpose of dispensing of the necessity of the introduction of books and records, it is stipulated between counsel that payments were made in cash by the defendant in the amounts covering the period as shown on the sheet which will be introduced; that the checks issued bore the date as shown in the sheet but that the actual payment was not received in Hilo until the time that is shown on the respective payment dates and the slips that have been

(Testimony of George B. Carey.)

introduced as part of the stipulation, and it is further agreed that these payments in cash do not constitute a duplication of payment. It is merely put in by counsel for the defendant's insistence in order to separate what payments were made out of profits, and what payments were paid out of proceeds from other sources belonging to the defendant, Carey. With that understanding this may be put in.

Mr. Moore: That is all right.

Mr. Moore: Counsel has agreed to the alteration at the bottom and if your Honor will initial it.

Mr. Cades: It is understood that we have reserved the right of cross-examination as to that.

The Court: Yes. It may be received in evidence and marked the next defendant's Exhibit number in order.

Clerk: 36.

Q. Now, Mr. Carey, I show you defendant's exhibit 11, being note dated February 19, 1935, in the sum of \$2330. Now, you will notice, Mr. Carey, that the next note is dated June 12, is it not?

A. Yes, sir.

Q. There is no new notes in between February, 1935, and June, 1935. Now, Mr. Carey—what would be this exhibit number that we have just put in?

Clerk: 36.

Q. I will show you defendant's Exhibit 36, and you will notice there, Mr. Carey, that between the time set out in exhibit No. 11 being the note of February 19, 1935, and Exhibit 12 which is June 12, 1935, that there are five payments made or six

(Testimony of George B. Carey.)

payments made between those notes and cash that is \$1000, 1019, 1397, 543, and 1000 and 863.94.

The Court: There is another one in December.

Mr. Moore: I am only talking about the ones between those dates, your Honor.

Q. Now, can you explain, Mr. Carey, why there were no new notes given between February and June and in addition why these payments were made?

Mr. Cades: We object to form, competency and relevancy.

The Court: I will allow the question, save trouble and save a lot of time.

Mr. Cades: Exception.

A. It was due to the fact that a good many of our salesmen that were working in Hilo at the time had returned to Honolulu and we did not have sewing machine contracts that were made on the Island of Hawaii to pledge with the Hilo Finance & Thrift Company for any additional borrowings.

Q. And what was the agreement at that particular time with reference to what kind of contracts had to be pledged with the Hilo Finance & Thrift Company?

A. They insisted upon having sewing machine contracts that were on the Island of Hawaii.

Q. And had you thus sent to Hilo any contracts that were not on the Island of Hawaii to secure further borrowings?           A. Yes.

Q. And was there any request made of you with reference to the contracts from other islands covering the security here?           A. Yes, sir.



(Testimony of George B. Carey.)

Mr. Cades: May it be understood my objection runs along this line?

The Court: Yes, that is understood.

Q. Did you ever receive any instructions with reference to this? A. Yes, sir.

Q. And from whom did you receive them?

A. Both from the Hilo Finance & Thrift Company and Mr. Tennent.

Q. I show you a letter dated December 26, 1935, addressed to you, Mr. Carey, and signed by Mr. E. C. Tennent. Is that the instruction that you received from Mr. Tennent? A. Yes.

Mr. Moore: Now, we will offer this in evidence, may it please the court.

Mr. Cades: Your Honor, please, there is nothing in this that has any allowance so far as our theory is. It is consistent with the theory of the case but if you are going to put every correspondent and everything in we will be here forever. I will object that it is wholly immaterial. If it goes in, it will be necessary for me to show everything in respect to the collateral and it can be no part of the issues in this case.

The Court: How is the collateral affecting your case?

Mr. Moore: May it please the court, as shown here between these notes there is a hiatus of about four months, that is from February to June. The agreement we rely on is an agreement to borrow money as is needed and we have borrowings shown by these notes practically every month and in some



(Testimony of George B. Carey.)

months more than once a month, and we want to show why the practice in this particular chain. In other words, the reason why the notes, the borrowings were not continued from month to month under the original agreement was because they could not furnish the security or the kind of security that the Hilo Finance & Thrift Company requested.

Mr. Cades: (Argument.)

The Court: They couldn't get any money unless they had a contract.

Mr. Cades: (Argument) Are we to go over Mr. Carey's business for the last five years and see why he didn't borrow more or less?

Mr. Moore: And furthermore, this letter contains the demand to pay over the then existing obligations and these payments—

The Court: I will allow it and it may be received and marked defendant's exhibit next in order.

Mr. Cades: Exception.

Q. I will show you a letter dated September 5, 1936, and ask you if you received that letter?

A. Yes.

Q. And that is a letter from whom?

A. Hilo Finance & Thrift Company.

Q. And dated when?

A. September 5, 1936.

Mr. Moore: May it please the court, at this time we will offer this letter in evidence, it being a letter addressed to the White Sewing Machine Agency by the Hilo Finance & Thrift Company prior to the due date of the next installments due on these notes giv-

(Testimony of George B. Carey.)

ing an accounting of what will be due and what will have to be forwarded in order to have these notes current.

Mr. Cades: Object to it for the same reason as stated. Obviously part of a series of correspondence. While it does not do any harm itself, it opens up a lot of issues in this case; how it has any bearing on it, I am not able to see.

The Court: It is stipulated here that the White Sewing Machine Agency is Mr. Carey?

Mr. Moore: That is what he testified, that he operated it.

Mr. Cades: He has not as yet.

Mr. Moore: Very well.

Q. Do you operate the White Sewing Machine Agency? A. Yes.

The Court: It may be received in evidence and marked defendant's exhibit next in order.

Clerk: 38.

Mr. Cades: Exception.

Q. Now, Mr. Carey, I show you defendant's exhibit 27, which is a note dated, that is the typewritten date that you evidently put on in Honolulu is September 29, 1936. The stamped date evidently put on by the Hilo office is September 30, 1936.

Mr. Cades: That is the date of the loan as shown on the slip.

Q. September 30, 1936. Now, you will not that on the payment of cash, Mr. Carey, on the date that you have dated the note that is September 29, you paid \$330.80? A. Yes, sir.

(Testimony of George B. Carey.)

Q. Did you receive any cash from that note?

Mr. Cades: Your Honor, please, all of those matters are matters of stipulation. Every note for the purpose of saving time if you will look at the—

Mr. Moore: In order to save time we can take care of this with reference to the notes commencing where I am, that is September 29 or 30 as appears in the Hilo records from then on with the exception of the note dated April 16, 1937, the note dated August 1, 1937, and the note dated November 30, 1937, the date received, no money in cash be paid, sent money along with the note.

Mr. Cades: Your Honor, please, I don't know whether counsel wants a double stipulation for some series. My objection is that he is taking up in piece what we have in here. (Argument.) It may be that that stipulation should be withdrawn. He has it in the matter of a stipulation and now he wants an oral stipulation. All right, you ask the questions and I will enter my objections.

Q. Did you receive any cash? A. No.

The Court: I will allow the question.

Q. What was the \$330 for?

The Court: The money that he sent?

Mr. Moore: Yes, your Honor.

Mr. Cades: I object to that again. We have already stipulated what payments he has made. There is already evidence that there was notes, there was a stipulation of how the proceeds were applied of each loan.

The Court: I am absolutely in the dark. You gentlemen have been in this case for months and

(Testimony of George B. Carey.)

you have been stipulating back and forth and I am up here trying to get in the record, trying to do something after you get all through.

Mr. Cades: Your Honor is very patient but sometimes when you try to stipulate to save time, sometimes it doesn't save time. But counsel insists on putting in past mail on this and that note. If he has anything to stipulate or bring in on anything I have no objection but it is just confusing.

The Court: Mr. Moore, is this in the stipulation?

Mr. Moore: This particular phase is not in the stipulation. Now, let me explain the purpose of this, your Honor.

The Court: If it isn't in the stipulation, I will let you proceed, Mr. Moore.

Q. Do you recall what this 330 that accompanied this 2330 note at that time was for? A. Yes.

Q. What was it for?

A. It was to pay installment payments on a previous note.

Q. What was your prepaid interest on a \$2000 note? A. \$330.

Q. And when there were 15 notes outstanding and you signed a new note received no cash, how much money were you required to send to keep your account current?

Mr. Cades: Your Honor, please, if that isn't a hypothetical question, I never heard one. He hasn't qualified this witness as an expert.

(Argument.)

(Testimony of George B. Carey.)

The Court: Is there anything in the evidence that was said about an agreement of 15 notes, Mr. Moore?

Mr. Moore: There is evidence in here not only 15, there is some 40 odd.

The Court: I mean about the particular 15 notes?

Mr. Moore: There are in these series.

The Court: There are a number of notes I know. I mean was there a special agreement about the number of notes?

Mr. Moore: May it please the Court, the purpose of this question is this: That we know from the stipulation that when these notes were made, that the proceeds were applied to the installments due on prior notes. That is reflected in each one of these stipulations, that is each one of the notes you can see that the time of the note was executed and there was a corresponding credit to each of prior notes. Now, when you get down to 15 of those, there wasn't sufficient money to pay the notes and to pay the prepaid interest. We know that the prepaid interest on each \$2300 note was \$330. Now, what I am asking this witness is, is this \$330 that accompanied these notes, it appearing in the evidence that there is that many notes, prior notes outstanding, is this \$330 for the prepaid interest or it is for something else?

Mr. Cades: We object. If your Honor will look at defendant's Exhibit 1-A on, these are stipulated facts that on April 10, 1934, that is the first note



(Testimony of George B. Carey.)

which is subject of the counter-claim, the defendant received \$1611 cash and \$310 was paid to an entirely different organization. As far as he was concerned it might have been paid to the Bank of Hawaii. The only issue here is criminal usury.

The Court: I think we will save time by allowing the question. I am frank to say that I haven't grasped this defendant's theory in the case as yet.

Q. Was this \$330 under that last question I propounded to you to pay any prepaid interest or not? A. Yes, sir.

Mr. Cades: I will move that that answer be stricken. He can't possibly testify to that because he doesn't know. Such evidence has no part in this record of any kind.

The Court: Well, he thinks it is evidence and I will leave it in there.

Q. And thereafter did this happen on various other occasions? A. Yes, sir.

Q. Now, Mr. Carey, you stopped borrowing from Hilo Finance & Thrift Company in 1938, did you not? A. Yes, sir.

Q. Can you recall the date offhand?

A. No, I cannot.

Q. Are you familiar with this?

Mr. Cades: I object to that sort very strenuously. I don't mind saying that the last note as shown by the complainant was July 13, 1938.

Mr. Moore: That is all right.

Q. Now, Mr. Carey, after you stopped borrowing did you see the treasurer of this corporation?

A. I did.



(Testimony of George B. Carey.)

Q. And who is that treasurer?

A. Mr. Hill.

Q. Mr. William H. Hill, the senator?

A. Yes, sir.

Q. Did you see him in Honolulu?

A. I did.

Q. Did you have a conversation with him with reference to the amounts due from you to the Hilo Finance & Thrift Company?      A. I did.

Q. Will you give this court the conversation to the best of your recollection?

A. Yes, sir. Senator Hill stopped into the office.  
The Court: What date was it?

A. That was I think in December 1938, and inquired of me why I was not making any more loans. I explained to him that I had written him a letter explaining that I was going to discontinue my loans due to the excessive interest rates I was paying. He explained that that was one of the reasons why he wanted to see me was because he had arrangements now made so that he could make additional loans to me at a smaller rate of interest. I asked him if that rate of interest was at the legal rate of one per cent per month. He said that it was and on the reducing balances. I asked him if he could do that now, why it was that he hadn't given me that kind of a rate before. He said——

Mr. Cades: At this point I move to strike all of it, from the question, I couldn't have told what it was all about. This conversation is wholly irrelevant, incompetent and immaterial. It has no bear-

(Testimony of George B. Carey.)

ing on whether these loans were within or without the terms of the statute and could only be put in the record for the purpose of prejudice. It is therefore not within the issue.

The Court: How is it material to the issues of the case, Mr. Moore?

Mr. Moore: It is material because here we will swear to show by this testimony and also by a letter that we will offer in evidence here that prior to the passage of the Act of 1939, Mr. Carey in this conversation and other conversations requested a settlement of all of these loans. That is all of course matters herein set forth, and gave to Mr. Hill a figure on the basis that he would settle and that Mr. Hill advised him that he would settle on that figure subject to the checking by his auditors, and that after that a letter was written making a definite offer of settlement; that at that time there in reality was nothing due to Mr. Hill at all but that he offered to give him more than what he was entitled to.

Mr. Cades: (Argument.) Is this an offer to the Court in such a situation attempting to plead? If it is——

Mr. Moore: This is to show that the whole thing was terminated prior to the passage of the Act of 1939.

Mr. Cades: (Argument.)

The Court: I don't think as long as there was no final settlement I don't see how it is admissible. It is simply an offer.

(Testimony of George B. Carey.)

Mr. Moore: May it please the Court, so that we can keep the record straight I want to get this particular letter in and have it come within the rule.

Mr. Cades: I would submit a ruling to the motion to strike.

The Court: The motion is granted.

Mr. Moore: Exception, your Honor.

Mr. Moore: I will ask that this letter dated April 5, 1939, addressed to the Hilo Finance & Thrift Company by Anderson, Wrenn & Jenks be marked for identification.

Mr. Cades: I would insist that that be expunged even from the records of the court. (Argument.)

The Court: Do you want it marked for identification?

Mr. Moore: Yes, your Honor.

The Court: Let it be marked for identification although I am frank to say that it hasn't anything to do with the case, but I don't know what your theory is yet in here.

Mr. Moore: May it please the court, I understand that the letter and evidence given by Mr. Carey in this regard has been stricken from the record and the other will be denied?

The Court: I will let you mark this as an exhibit for identification.

Mr. Moore: We will offer it in evidence.

Mr. Cades: Which we object to that.

The Court: I will sustain the objection. It is simply an offer to settle.

Mr. Moore: May we have an exception?

The Court: Yes, sir.

Mr. Moore: You may cross-examine.

(Testimony of George B. Carey.)

Cross-Examination

By Mr. Cades:

Q. You have been in the sewing machine business for many years, have you not?

A. Yes, sir.

Q. And the substantial part of your business consists of selling sewing machines on installment plans?

A. Yes, sir.

Q. And it would be fair to say that you are very familiar with the methods of installment selling, aren't you?

A. Yes, sir.

Q. In connection with installment selling you also are familiar with the cost of money, are you not?

A. No.

Q. You are not familiar with the cost of money?

A. No.

Q. Do you rely on other people to advise you as to what the cost of money was to you?

A. To a great extent.

Q. However, you did know that it was more costly for you to borrow by paying interest deducted in advance than it was to borrow from banks and pay an interest after the note had matured?

A. No, I knew it was less expensive to borrow from the bank than the finance company but I knew nothing whether interest deducted in advance or paid at the end made any difference.

Q. You never sat down to compute that it would be inexpensive for you to enter into an agreement to pay interest in advance than it would to pay interest at the end of the term?

A. Yes.

(Testimony of George B. Carey.)

Q. Knowing that, you nevertheless authorized your auditor Mr. Tennent to negotiate a loan on the best terms that he could get for the borrowing of money to open this Hilo branch?

A. Yes, sir.

Q. And as a result of such authorization he did enter into the arrangement with the Hilo Finance & Thrift Company to which he has testified to in this courtroom?

A. That's right.

Q. And you heard him testify?

A. Yes, sir.

Q. You have been in court all during the testimony?

A. Yes, sir.

Q. Now, as Mr. Tennent had entered into this arrangement with the Hilo Finance & Thrift Company he told you what the arrangement was, did he not?

A. Not in detail.

Q. But in a general way you knew what the arrangement was?

A. In a general way, yes.

Q. Now, isn't it a fact you have tried to get bank loans and have persistently tried to get bank loans in order to carry on your business?

Mr. Moore: I object. That is not proper cross-examination.

The Court: It is criminal intent. I will allow the question.

Mr. Moore: May I have an exception?

The Court: Yes.

Q. And isn't it true Mr. Carey, that because your financial business was such that you could arrange bank loans you in fact did arrange bank loans because it was cheaper interest?

A. Yes.

(Testimony of George B. Carey.)

Mr. Moore: May we have a continued objection?

Q. All during the course of your loans with the Hilo Finance & Thrift Company it was your business to get the money just as cheap as you could?

A. Yes, sir.

Q. And in accordance with that business intention didn't you infer from time to time even during the course of the transactions as it has been testified by you, borrowed substantial sums from the bank? A. I did.

Q. And the thing that limited your borrowing from the bank was the fact that it was purely a credit factor, it was purely a credit risk so far as bank was concerned to determine how much bank loan they would give you? A. That's right.

Q. Now, you have testified to some length to the type of collateral security that was offered in order to keep these notes secure. You were under no obligation to make monthly borrowings that you testified to, that is correct? A. That's right.

Q. In other words, the determination each month as to whether you were going to make a finance company loan or bank loan or take part of the proceeds of the collection of the sewing machine contract which you personally were collecting, it was a matter to be determined by you?

A. Up to a certain point.

Q. You were collecting proceeds of sewing machine paper, weren't you? A. Yes, sir.



(Testimony of George B. Carey.)

Q. You were collecting the proceeds of the sewing machine paper which was pledged as collateral?

A. Yes, sir.

Q. You were also receiving money from your cash sales in your business, were you not?

A. No, our arrangement was such with our salesmen that the salesmen were allowed to hold the cash from cash sales as a part of their sales commission.

Q. Well, how about cash sales that were made at your main office. Didn't you receive cash for them?

A. Yes, sir.

Q. Didn't they go into your coffers?

A. Yes, sir.

Q. Weren't you free to use that cash or any cash received from other sources to make payment or obligations that became due?

A. Up to a certain point.

Q. What do you mean up to a certain point?

A. I mean that if it became a question of my making payments of \$2500 a month, \$3000 a month, \$2000, \$2200, any amount like that constantly every month to the loaning company I would be unable to do it financially.

Q. Financially, and then the only limitation was on your finance ability. There was no legal limitation, there was no agreement that limited you?

A. My reason for that was that, as I have stated before, the only reason that I stopped borrowing at all was because I was short of contracts that were

(Testimony of George B. Carey.)

satisfactory. If I had contracts I would never stop these borrowings; I wouldn't dare to stop them because I did not have the finances to make the payments without these renewal notes.

Q. But the determination of whether you were going to renew your business perhaps of selling a few sewing machines, that was a business determination made by you in every case?

A. Yes, I didn't want to put myself into a position where the finance company would take over the collateral.

Q. But if you wanted to there was nothing in your agreement with the finance company to prevent you from paying off the notes out of cash received, was there?

A. No, my arrangement was such that I had to produce the machine.

Q. You mean your business interest was such that you wanted to expand your interest and in an expanding business naturally you had to have more money to operate on?

A. I think, yes.

Q. That's right. So that now referring to the actual notes in question I want to direct your attention to the first notes that are involved in this counterclaim, and I refer to Exhibit 1 to 13 inclusive. Now, I refer first to the, I show you the Defendant's Exhibit 1 which is a promissory note, Defendant's Exhibit 1 is a promissory note dated April 10, 1934.

The Court: That is not the note in suit?

Mr. Cades: That is the counter-claim, the first

(Testimony of George B. Carey.)

note in the counter-claim, your Honor. Do you have the Defendant's 1-A there?

Q. Now, that note of April 10, 1934, represents a loan made according to this stipulation which has been entered into \$2330 of which \$330 was deducted in advance. It was also stipulated that you received \$1611.70 in cash and \$310.64 was paid on notes to the Realty Investment Company, \$77.66 was paid on a pre-existing loan with the Hilo Finance & Thrift Company and that you eventually repaid it and the amounts are shown there on and you received a rebate of \$54.36. You are familiar with that, is that correct? A. Yes.

Q. Now, that note has been fully paid by you, is that correct? A. Yes.

Q. And when you made these payments, the repayments you made these, repayments voluntarily without any suit being brought or any other coercion, is that correct? A. That's right.

Q. And going through the other notes I do not have to take them up individually but your testimony would be the same for all the notes that you were suing for in your counter-claim that you repaid those notes in full, is that correct?

A. Yes, sir.

Q. Your dealings with the Hilo Finance & Thrift Company was very amicable, were they not, right up to the time of the dispute at the end of 1938? A. Yes.

Q. They were? A. Yes.

Q. As a matter of fact the amounts which you

(Testimony of George B. Carey.)

were paying for the money loaned by the Hilo Finance & Thrift Company was considerably less than the amounts you were paying to the other finance companies?

Mr. Moore: May I have an objection?

Mr. Cades: I have a right now to show——

The Court: I will allow the question.

Mr. Moore: Exception.

A. I don't know.

Q. You don't know?                    A. I don't know.

Q. You never figured it out, did you?

A. No.

Q. Well, you had in your employ, did you not, a bookkeeper by the name of Funaki?

A. Yes.

Q. Mr. Funaki was quite an expert on the cost of money, was he not?

A. I couldn't say as to whether he was an expert or not.

Q. You had great confidence in your employee Mr. Funaki. He advised you from time to time, did he not?

Mr. Moore: We object, that is outside of the issue.

The Court: Yes, what do you want to show?

Mr. Cades: They come in on a criminal usury and when we get to them—but in order to have my record perfectly clear, I want to show that he knew the effective rates; that he had an expert employee and in fact he was advised and paid great attention to it.

(Testimony of George B. Carey.)

Mr. Moore: Is that an offer of proof?

Mr. Cades: No.

The Court: I will allow the question.

Mr. Moore: Exception.

A. No.

Q. Mr. Funaki didn't advise you?

A. Yes, he advised so far as money. I had great confidence in his ability, advising no. He gave me half a dozen different rates of interest on practically the same transactions so no one could have a great amount of confidence.

Q. He advised you, didn't he, that there were many different ways of computing effective rates, did he? A. Yes.

Mr. Moore: We have another batch of this to attach to the defendant's exhibits.

The Court: You now offer them in evidence?

Mr. Moore: Yes.

The Court: They may be received in evidence as defendant's exhibits next in order.

Q. Just to clear up a point in connection with the stipulation regarding the note dated March 17, 1936, this is one of the notes that had been included in your contemplation. It is not in that batch? The note is in the usual form according to the stipulation which is subject to check?

A. What date?

Q. March 17, 1936, that is in the new batch that was just put in?

A. That would be 20A.

Q. Note No. 9019. According to the stipulation which is subject to check proceeds of that loan were

(Testimony of George B. Carey.)

paid out as follows: \$330 was deducted in advance as interest, you received in cash \$46.88 and \$123 was paid on a note of John A. Howard, and \$121.40 was paid on a note of John A. Howard, Jr., and the remainder was credited on your pre-existing making the total amount of the loan, is that correct?

A. I couldn't say that without going over the correspondence.

Q. Well, this stipulation is subject to check. At least you were with respect to this note all applications of proceeds of loan were checked by you, were they not?

A. No.

Q. Well, someone in your employ kept a current account which at least satisfied you on the amount of your existing indebtedness from time to time?

A. Yes, sir.

Q. So that, subject to check, as to the exact application your books and records showed you that the full proceeds of that loan were accounted for, is that correct?

A. I think I will answer that question by saying that I couldn't say without correspondence.

Q. Do you have your books and records in this courtroom?

A. No.

Q. You don't?

A. No.

Mr. Moore: May it please the court, with reference to this statement, may it please the court those three amounts that is \$46.88 appear on 20A, received by defendant \$46.88, and then paid on notes to John Howard \$123 and \$121.40 to agree with



(Testimony of George B. Carey.)

the records of the defendant, the defendant having charged against himself as received by himself the sum of \$291.28, which is the total of those three figures.

Mr. Cades: In other words, the stipulation has been checked and found to be accurate?

Mr. Moore: As to amount.

Mr. Cades: As to all facts appearing on there.

Mr. Moore: Here we have charged against Mr. Carey the sum of \$291.

Mr. Cades: I don't know what you are saying. That is no part of the stipulation.

The Court: That is all right?

Mr. Cades: There was a little wrangling. Counsel agrees that the stipulation was accurate.

Mr. Moore: Yes.

Q. With reference, I refer to note No. 9133 which is the next one in that. That is defendant's exhibit 21A. I call your attention to it.

A. 9133?

Q. Yes, the date of the note is 4/24/36, and the date of the loan is 4/25/36?

A. It is dated here April 24, 1936.

Q. That is the date, that date is the date that you signed the note in Honolulu, I assume is that correct?

A. Yes.

Q. Just to clear the record, the reason for the discrepancies of the dates of the loan and note was because your office was in Honolulu?

A. Yes.

Q. And it took some time before the notes were taken over and delivered?

A. Yes.

(Testimony of George B. Carey.)

Q. And the date of the loan was the exact date it was received in Hilo when credits were allowed?

A. I didn't know that.

Q. You knew that credits were allowed when it was received? A. Yes.

Q. So that the date of payments as shown on these various accounts always reflected at the time when the promissory note was received in Hilo?

A. Yes, sir.

Q. Now, I call your attention to the fact that in the stipulation entered into between the parties as to this particular note, \$126.50 was applied on a temporary loan that was existing. Are you familiar with that? A. No.

Q. Have you examined the stipulation by defendant's exhibit 21A and make a statement about that?

Mr. Moore: May it please the court, it is admitted that \$291.28, being the total of \$164.78 and \$126.50, that has been credited as received by Mr. Carey. Where, if the books show that it was credited on a temporary loan, that is perfectly all right.

The Court: In other words that is checked?

Mr. Cades: Checked yes, and agreed to. That does away, without the necessity of that question.

Q. Now, Mr. Carey, isn't it true that in addition to the loans which have been testified to and admitted in evidence herein, that you were making temporary borrowings from the Hilo Finance & Thrift Company for the purpose of your business, from time to time?

(Testimony of George B. Carey.)

Mr. Moore: May it please the court, temporary borrowings you say?

Q. Temporary loans? A. Yes.

Q. They were made by the Hilo Finance & Thrift Company? A. Yes, sir.

Q. Made to you for a period of one or two months, from that time? A. Yes.

Q. To tide you over for some business reason?

A. Yes.

Q. Isn't it true that many of the amounts of rebate and proceeds of the loans that are in this, involved in this case were applied in payment of those temporary loans?

A. I cannot say.

Q. But you believe that that is possible?

A. It is possible.

Q. In fact you have just heard the stipulation of counsel that on one of these notes part of the proceeds were paid to pay off one of these temporary loans? A. He says that it is.

Q. He has just stated it in the record and you are satisfied with it? A. Yes.

Q. The rebates that were paid to you from time to time that came to you in the form of a check, didn't they? A. At times, other times.

Q. And the money was yours to do with what you want? A. Yes.

Q. And sometimes the rebate was applied on account of the loans that were involved in these and sometimes they were applied on temporary notes and sometimes in your cash drawer?

(Testimony of George B. Carey.)

A. Almost all cash they were applied to the loans which is occasional.

Q. Either to the loans in this suit or to the temporary loans is that correct?

A. As I say I couldn't say about these temporary loans.

Q. Without cluttering up this record with the temporary loans, there were payments made from time to time on temporary loans on \$82.50, isn't that an amount of rebate, of the usual rebate on your proceeds? A. Yes.

Q. It is quite possible you used the rebate to pay off other loans? A. Yes.

Q. So that when it is stated hypothetically that the only cash received by you in this proceeds of 15 loans, there is a certain sum that may or may not be accurate?

Mr. Moore: I object to that.

Q. I will withdraw that. You don't know the amount of cash you got from temporary loans?

A. Yes.

Q. You don't have the books and records and you don't know what the amount of the temporary loans were?

A. We have them in Honolulu.

Q. But you don't have them and you haven't produced them in court? A. No.

Q. But you would say to the court that from time to time you had additional borrowings?

A. Yes, only a short period of time possibly 60 days on some wholesale transaction.

(Testimony of George B. Carey.)

Q. And you received cash in these temporary loans? A. Yes.

Q. And some of the cash you received was paid over out of the proceeds of the loans that are in this case?

A. I am not certain as to that.

Q. One of them has been testified to, admitted by your own counsel and there may be others, may there not? A. Maybe.

Q. It is quite possible but if they were paid you don't know now? A. That is right.

Q. Now, Mr. Carey, the Hilo Finance & Thrift Company have never foreclosed on any of this collateral, have they?

A. They threatened to.

Q. But they never have, have they?

A. No.

Q. There have been no foreclosures for you to attempt to collect the collateral?

A. No, there was a notice served on me that—

Q. That they might or would but that is all?

A. Yes.

Q. You have explained at great length as to why you had no borrowings in 1935 and you paid out of your own proceeds, you remember that testimony? A. Yes.

Q. That was merely due to the condition of your own business, is that correct? A. Yes.

Q. It had nothing to do with this agreement with the Hilo Finance & Thrift Company, did it?

A. No, only that I could not supply the particular contracts.

(Testimony of George B. Carey.)

Q. And you weren't violating any undertaking that you had entered into with them when you stopped borrowing during that period of time?

A. No.

Q. You were free to borrow or not to borrow as you saw fit?      A. Yes, sir.

Q. Your monthly payments were due in installments one month after the date of each loan, is that correct?

A. No, sir, they were not.

Q. They were not?      A. They were not.

Q. What do you mean by that?

A. I mean that I was told that the payments could be made any time during the month irrespective of the date of the note.

Q. In other words, it was an understanding that you had a period of grace after each installment became due, is that correct?

A. Well, it could be put that way.

Q. That is if the installment according to the loan was due on the 6th, it was your understanding that you could pay that at any time before the 30th without a delinquency?

A. Yes, that is right.

Q. Was that part of the agreement with the Hilo Finance & Thrift Company?

A. That was in letter form.

Q. That was the understanding of your right?

A. Yes.

Q. In other words, it was your duty to make these installments prior to the expiration of what-



(Testimony of George B. Carey.)

ever days there were in the following month before the end of the month?      A. Yes.

Q. And that might be a period of grace between two weeks or three weeks so much as 28 days?

A. That's right.

Q. That was the understanding?

A. Yes, sir.

Q. And of course no delinquent interest was charged to you at any time on any accounts that are involved in this litigation, is that right?

A. Yes, delinquent interest was charged.

Q. Delinquent interest was charged. Will you state specifically on what notes and on what payments?

A. Now, on these particular ones in question, possibly more in these particular ones in question.

Q. Do you want to reconsider your answer?

A. Yes.

Q. What is your answer then?

A. Well, what notes are involved are the notes in our counter-claim involved in this transaction. Then the answer is, yes.

Q. That the delinquent interest was charged?

A. Yes.

Q. Where are all the notes and where are all the stipulations, will you point out in any particular wherein delinquent interest was charged, to the court?

A. I can show you statements made up by the Hilo Finance & Thrift Company and my auditor requested that I pay interest on notes that had

(Testimony of George B. Carey.)

already been paid off, that is what I mean, notes that I had paid off and had returned to me.

Q. Perhaps you didn't understand my question. You understand the interest you paid in advance to each note? A. Yes.

Q. In addition to that interest which was deducted in advance each time a loan was made did you pay on any notes involved in this counterclaim delinquent interest?

A. I did not pay it but I lost the rebate because I didn't pay it.

Q. On 8 notes you lost rebates because your payments were not prompt?

A. I lost rebates on delinquent interest on notes that I had already paid off one year and a half or two years prior to that. They hitched up a list of delinquent interest that totalled the sum of \$665, charging me on notes that had already been paid off.

Q. Now, just a moment remember you are on the witness stand and under oath and you want to be careful about your statement. A. Yes.

Q. There were certain notes involved in this counterclaim where no rebates were given to you, is that correct? A. Yes, sir.

Q. Now, it has been stipulated as to what all the payments were on your notes in the counterclaim? A. Yes.

Q. You have seen the stipulation?

A. Yes.

(Testimony of George B. Carey.)

Q. Aside from the loss of that rebate it has been fully testified to, was there any other thing in the matter, was there ever any charge made to you for delinquency in the notes that were covered by the counterclaim?

A. Well, if you can consider that the loss of the rebates was due to the fact that they offset them by charging me with delinquent interest, yes, you could say so.

Q. But they didn't in fact charge you with delinquent interest. You were getting the rebate, oh, you didn't get a rebate?

A. Yes, I didn't get a rebate if I didn't pay the delinquent interest they demanded, I wouldn't get the rebate.

Q. You have heard the agreement testified to; you were in court? A. Yes.

Q. That agreement was negotiated for you by Mr. Tennent? A. Yes.

Q. I understand you to say that the agreement as testified to was an accurate one, that that was an accurate statement? A. Yes.

Q. The agreement was that if you didn't pay promptly or within or before the expiration of the next succeeding month with that small period of grace, that you would lose your rebate, wasn't that the agreement? A. Yes.

Q. In other words, the rebate was a benefit given to you for prompt performance?

A. Yes.

(Testimony of George B. Carey.)

Q. Notwithstanding that you didn't promptly perform on the money of the notes and the rebates were given to you, is that accurate?

A. Yes.

Q. As to some notes of the Hilo Finance & Thrift Company, if you have any explanation——

A. On some no rebates were received even though the payments were made promptly.

Q. Involved in a litigation in this case?

A. Yes.

Q. You have access to all the records of the files and I want you to say to the court which contracts they were specifically and take all the time you want to answer that question. If you have to consult with any of the books or records you are free to do that.

Mr. Cades: I suggest that the noon hour has come.

Mr. Moore: We have no objection.

Mr. Cades: We will offer that in due time as part of our defense.

The noon recess was had and at 1:30 all parties to the proceedings being present, the following testimonies were taken:

Mr. Cades: May it please the court, if you will recall we had some figures on the blackboard and I have just transposed that on a sheet of paper and it is put in the same way that Mr. Tennent was figuring on the two per cent interest basis. That is to be marked for identification.

The Court: Just mark it for identification, mark it the next number in order for identification.

(Testimony of George B. Carey.)

Mr. Cades: It is understood that that is in evidence but merely an explanation of a hypothetical question, defendant's exhibit No. 2.

Q. You were to tell the court that although there was prompt performance, there was no rebates given to you. Have you prepared yourself on that question, Mr. Carey? A. Yes.

Q. Will you state to the court what those notes were? A. Notes 9995.

Q. Dated what, January 7, 1937?

A. Yes, sir.

Q. What else? A. 9899.

Q. Dated December 1, 1936, is that right?

A. That's right. Our records show that 9995, the maturity date was April 9 and it was paid on April 30, and no rebate was received.

Q. What year?

A. 1938. And on 9899 the record shows the maturity date as being March 1, 1938, and was paid on March 31, 1938.

Q. Does your record also show that the monthly installments were paid within the period of the due date? A. Yes, in my contention——

Q. Wait a minute, I don't want your contention. If your records show that I want to know that?

A. Yes.

Q. The records show that the installments were paid promptly? A. Yes, sir.

Q. I understand then your testimony is that on each of these notes one January 7, 1937, and one

(Testimony of George B. Carey.)

December 1, 1936, the installments were paid for either on or before the due date of the monthly installments and the note was discharged in accordance with its terms and no rebate was given to you?

A. That's right, on 9995 there was no rebate and on 9899 there was a rebate of 82.

Q. There was a rebate of 82?

A. Yes, 82 whereas 110 was the agreed amount.

Mr. Moore: May it please the court there are 9 more of these tabulations, as before and we will ask that these be admitted in evidence and be attached to the notes to which they correspond.

The Court: They may be received.

Mr. Moore: Under the same conditions.

Mr. Cades: As part of the stipulation.

Mr. Moore: Yes, sir.

Mr. Cades: That begins with defendant's exhibit 22-A.

Mr. Moore: I understand that they are not in order but you will have to check with the notes themselves in order to get it in the proper order because there are some in the middle that are not there——

Q. Well, now, let's take No. 9899, the rebate on that, the admitted rebate received was 82, is that correct? A. That's right.

Q. And your contention is that you were entitled to how much more rebate under the contract existing? A. \$27.50.

Q. Was demand ever made for that amount; did you ever request the plaintiff to pay you rebate of \$27.50? A. I requested it.



(Testimony of George B. Carey.)

Q. In writing? A. Yes.

Q. Will you produce the copy of the letter in which that request was made?

A. Here it is.

Q. I show you a letter, a copy of what purports to be a letter addressed to the Hilo Finance & Thrift Company dated November 29, 1938, and ask you whether that is a copy of the letter you sent to that company? A. Yes.

Q. Will you separate that from your file? I want to introduce that in evidence.

A. I think the schedule that is attached to that letter should be filed, too.

Mr. Cades: Before introducing this in evidence, I would like to read it because it is so pertinent and it shows clearly because here is a man whose own letter, it shows with respect to his attitude on rebates.

Mr. Moore: I object to it.

Mr. Cades: Shall I offer it first before reading it?

Mr. Moore: Subject to our objection.

Mr. Cades: Subject to your objection it will be offered in evidence and your Honor is asked to rule on it. (Reads the letter.) I offer that letter in evidence.

The Court: It may be received in evidence.

Mr. Moore: May we have an exception?

The Court: Yes.

Q. As a matter of fact, in accordance with the letter what you were requesting was a modification

(Testimony of George B. Carey.)

of the agreement along an equitable line in view of the fact that you were hard pressed, is that correct?

A. No, it was in the form of a fair and equitable arrangement that——

Q. That is correct, you thought it was more fair to you that in such a time your agreement if you didn't default in all of your installments that you should get some part of the rebate?

A. Yes, but——

Q. But your agreement was not to that effect. You were asking for a modification of your agreement along the equitable lines that you were suggesting, is that not correct?      A. Yes.

Q. And with the exception of these notes concerning which you say \$27.50 was due you and concerning which on the other note how much do you consider was due you on 9995; what did you consider was due you on that one?      A. \$110.

Q. With the exception of those the other rebates were paid satisfactorily to you in accordance with the agreement, is that correct?

A. Well, this letter of the rebates to all of those notes it refers to where the one-third rebate of the interest was to be refunded to me.

Q. How many?

A. Of which three in——

Q. But these are the only two which you contend there was anything near proper performance, is that correct?      A. Yes.

(Testimony of George B. Carey.)

Q. The others were clear? A. Yes.

Q. So that the only two under any stretch of imagination that could be in dispute would be the amount of \$24 on one and \$110 on the other, is that correct?

A. That is correct, that is right.

Q. You have testified that there were temporary loans that were made in the course of your dealings with the Hilo Finance & Thrift Company, is that correct? A. Yes.

Q. That they have——

Mr. Moore: May we have an objection to that line; may we have the same objection and exception?

The Court: I don't remember your objection.

Mr. Moore: We object to this as being incompetent, irrelevant and immaterial, not being within the issues here. The fact that some of the funds that Mr. Carey received from these notes that is his payments in cash to him or credited to some other account is what he has done with the funds other than the application on these notes is immaterial.

Mr. Cades: (Argument.)

The Court: I will allow the question.

Mr. Moore: Exception, and a continuing exception.

Q. Do you know what the rate was that you paid on your so-called temporary notes that were given to you to tide you over?

A. I can't state accurately.

Q. Would it refresh your memory if I showed you the accounts, where it showed the account?

(Testimony of George B. Carey.)

A. No, it doesn't show anything about the rate of interest. I can't see the rate of interest on these cards. It says cash interest but no amount.

Q. Very well, do you have any records that would enable you to tell the court what the amount of your temporary borrowing was from this company? I think you testified that you had before.

A. I think I could pick it up.

Q. On the records that you have with you?

A. Not for an absolute certainty.

Q. You do know for a fact that on these temporary loans the interest was not deducted in advance; you do remember that, don't you?

A. Yes, sir.

Q. And that the interest was merely paid at the end of a loan, is that correct?

A. Yes, that is so.

Mr. Cades: Very well, your Honor, we will have to put this on by our own witness.

Q. And you also recall that the rate that was charged you on this loan was not in excess of one per cent a month? A. No.

Q. You don't recall that. You have no recollection as to what the interest rate is? A. Yes.

Q. But you did get the money which was used in connection with the same contracts about what you have been testifying, is that correct, proceeds of these temporary loans you used in part to pay your business obligations? A. No.

Q. What were they used for?

(Testimony of George B. Carey.)

A. They were used to pay the freight and charges on a few shipments of sewing machines that came down on a wholesale arrangement.

Q. And when the sewing machines were so purchased and were so paid for the proceeds went to you, did they, the proceeds of sales all went to you?

A. I can't say the proceeds all went to me, no.

Q. Well, you were the owner of the material that was bought from these loans? A. Yes.

Q. And when you sold them then the proceeds belonged to you?

A. Not all of the proceeds. You said all of the proceeds. If you are going to be that technical, no.

Q. The proceeds to you were your profit, weren't they? I am not trying to be technical. I am trying to get you to answer the questions correctly.

A. Yes.

Q. And you paid for some of these temporary loans by borrowing on the collateral loans, didn't you?

A. Borrowing on the collateral loans.

Q. Yes, but the proceeds of the collateral loans which have been testified to, a portion of the proceeds were used for paying off these temporary loans to which you have referred?

A. Not that I know of.

Q. Well, in other words, you don't agree with your counsel. There is a stipulation that was entered into; was that a valid stipulation?

A. These wholeasle transactions have nothing to do with it.



(Testimony of George B. Carey.)

Q. Let's go over that again then, Mr. Carey. You made temporary loans from the Hilo Finance & Thrift Company for your own business purposes, is that correct?      A. Yes.

Q. You repaid the loans, didn't you?

A. Yes.

Q. And to repay the loans you used at least a portion of the proceeds that you borrowed under the notes that are in evidence in this case, is that right?

Mr. Moore: We object, that is not the evidence here. The testimony here is that on these temporary loans there appeared payments of \$82.50 and similar amounts that were rebates. (Argument.)

The Court: I think that is the evidence.

Mr. Cades: It appears right in the stipulation, defendant's exhibit 21A that a portion of that loan was used, paid on a temporary loan as conceded by counsel and checked by counsel. I don't think that I need pursue on that line. I think perhaps it is shown by the written testimony. (Argument.)

Q. Now, Mr. Carey, you have been very successful in your business, have you not?

Mr. Moore: I object to that. What has that got to do with this case if he is successful or going broke or what.

Mr. Cades: Well, you dragged it in.

The Court: I will allow the question.

Mr. Moore: Exception.

A. I presume that you would consider it as having been successful.



(Testimony of George B. Carey.)

Q. Well, the loans that are involved in this case represent it.

Mr. Moore: May it please the court, I understand this is the balance of the stipulations that are attached to each of the notes. I will offer these in evidence under the same condition as the former one and will ask that they be attached to the notes that bear a corresponding number.

The Court: It may be received.

Mr. Moore: And so marked for I further recall it was stipulated that there is 4 notes missing and 4 of those 4 notes is in evidence so that those will come in in the order of time so that the sheet itself will be the exhibit for that particular transaction.

The Court: I suggest that counsel get together and see that the exhibits are all in order.

Mr. Moore: We will do that.

Q. Well, in any event when the final payment was made of all the notes other than the notes that are subject of this counterclaim, I mean other than the notes of the plaintiff's suit, you know the ones, the 8 notes that are sued on, you were able at that point to get sufficient bank credit to dispense from further borrowings from the finance company, is that correct?

Mr. Moore: That is also subject to our objection.

The Court: Very well.

A. Why, no.

Q. I thought you said that you had applied from time to time from the banks and you were trying

(Testimony of George B. Carey.)

to get bank loans and you eventually succeeded, when you succeeded in getting bank notes?

A. September of 1936.

Q. That was some and did they increase?

A. I got some in 1932.

Q. That is right, you got some in 1932 and 1936 and as the amount of bank loans increased the amount of the finance company decreased, is that right? A. Yes.

Q. That is a fair statement? A. Yes.

Q. And you also testified that you not only borrowed from this finance company but other finance companies, the bank from time to time and you put up collateral in your business to support all the various loans, did you not? A. Yes.

Q. I show you here a form entitled collateral form for pledging of contracts and the first date filled in is estimation of amount due by purchasers due on contracts assigned for November 1, 1938, and I will ask you to examine that; will you explain that that form is, please?

A. Why that is a form that was prepared by the firm of Tennent & Greaney.

Q. Quarterly or monthly?

A. For showing the various finance companies, the banks, White Sewing Machine Company, any firm that I was indebted to that the condition of the collateral that was supposed to be checked by Mr. Tennent every four months, I think.

Q. Every four months and a form similar to this was prepared and filed with all interested parties every four months according to you? A. Yes.

(Testimony of George B. Carey.)

Mr. Cades: If your Honor, please, I ask that this be admitted in evidence as showing the manner in which this collateral was handled.

The Court: It may be received in evidence and marked plaintiff's Exhibit next in order.

Q. Now, from this exhibit it would appear that on November 1, 1938, \$209,760 worth of collateral. Does that refer to the face amount of the collateral?

Mr. Moore: May it please the court, I am going to object to any questioning of this except that insofar as it applies to the Hilo Finance & Thrift Company. (Argument.)

The Court: Is he able to tell how much of this money just applies to the Hilo Finance & Thrift Company?

Mr. Cades: Our point is this; we are not going to pursue it for the rest of the afternoon, but we have put in testimony about the going into the perfection of this collateral. As a matter of fact this exhibit will show that so far as the finance companies received by way of collateral—— (Argument) That is the reason I objected to any testimony on the collateral.

The Court: All right, I will allow it.

Mr. Moore: May we have an exception?

The Court: Exception, yes.

A. That's right.

Q. That refers to the face amount of the collateral? A. Yes.

Q. By the face amount of the collateral you mean the amount of the unpaid balance of the per-

(Testimony of George B. Carey.)

sons who have purchased sewing machines and the amount owing by them to you?

A. Yes, that's right.

Q. Now, will you state to the court what the difference was in the face amount of the collateral offered between the cash price of the goods that were sold and the time price of the goods that were sold covered by the agreement? A. No.

Q. You can't? A. No.

Q. Didn't you not sell machines on time and a financing charge was made by you, was it not?

Mr. Moore: I object to what his business was; what has that got to do with this case.

Mr. Cades: (Argument.)

Mr. Moore: I object, that is irrelevant and immaterial and has got nothing to do with the issues of this case, improper cross-examination and highly prejudicial.

Mr. Cades: (Argument.)

The Court: I will allow the question.

Mr. Moore: Exception, and continuing objection and exception to this line of questioning.

A. No, it was not.

Q. In other words, you sold machines for the same amount of cash that you did if you sold it on an installment plan? A. No.

Q. There was some difference between the cash price and the time price? A. That's right.

Q. For your information by the statutes of the Territory of Hawaii it is defined as a financing

(Testimony of George B. Carey.)

charge. I will show it to you in the book. You did in fact make a charge for the privilege of paying on time to your customers?

A. From that standpoint, yes.

Q. And isn't it true that a machine that ordinarily sold for \$79 for cash, sold for time payable over 15 months for \$200, is that approximately correct? A. No.

Q. Well, what would a \$79 machine sell for, the cash price \$79?

A. Do I have to answer that question?

The Court: Yes, go ahead and answer that question. Repeat the question.

Q. What would a \$79 machine sell for, the cash price \$79 if payable in installments, in 15 months?

Mr. Moore: Is that the price it had cost Mr. Carey or the price he sold it for for cash? We object, it is unintelligible; it is not fair to the witness.

The Court: Objection will be sustained.

Q. The usual unit of a sewing machine imported into the Territory of Hawaii cost you what, Mr. Carey, a sewing machine that became the subject of these collateral agreements?

Mr. Moore: I object to it.

The Court: You have your objections to it.

A. Do I have to answer personal questions of that kind?

The Court: Yes, answer the question that is put to you.

A. Well, they were different prices.

Q. We understand.

(Testimony of George B. Carey.)

A. Each machine and each style of machine that I purchased had different prices.

Q. All right, take the highest priced type of unit, how much did that cost you imported?

A. Probably around, if I remember, \$75 to \$80.

Q. At what period during this transaction, what years? A. From 1936 on.

Q. And cost you \$75? A. Yes, sir.

Q. Imported into the Territory of Hawaii?

A. Yes.

Q. All right, when you sold that machine for cash you had one price and you testified when you sold it for time you had another price. What was the cash price on that machine for resale, \$75 machine? A. \$220.

Q. Cash? A. To a retail customer.

Q. Cash, what was the time price on that machine if sold over a period of 15 months?

A. That was the time price of \$220.

Q. What was the cash price, I beg your pardon?

A. It would be about \$20 less.

Q. About how much less?

A. \$20 less.

Q. In other words, the cash price was \$200 on a \$75 unit imported if you sold it for cash and \$220 if sold on time, is that right?

A. That is about right.

Q. So that you had charged in your financing plan approximately \$20 on \$200 for 15 months?

Mr. Moore: We object to that.



(Testimony of George B. Carey.)

The Court: The objection will be sustained.

Mr. Cades: I have nothing more, your Honor.

Redirect Examination  
Of George B. Carey

Mr. Moore: That is all, Mr. Carey.

Mr. Moore: The defendant rests.

Mr. Cades: Our evidence for defense is very little, your Honor, but before proceeding I want to move now that the defendant's counter-claim and set off be non-suited for the following reasons: one, that they have shown by the evidence that the payments made were voluntarily paid pursuant to an agreement or agreements entered into between the plaintiff and defendant and that the defendant is not entitled to recover any sum so voluntarily paid or any part thereof. Secondly, that it affirmatively appears that the amounts charged were within the provisions of the money lenders act of 1933. I had better identify that, Act 154 of the Session Laws 1933, and were also within the provisions of Act 231 of the Session Laws of Hawaii 1937, the Industrial Loan Act, and finally on the third ground that it affirmatively appears from the evidence that if the defendant had any claim whatsoever for the recovery of interest so voluntarily paid, that the same is generally procured and is uncollectible under the provisions of Act 75 of the Session Laws of Hawaii, 1939. That is our motion. Fourth, that there is a fatal variance between the pleading and purchases that is adduced in this case. I think it might be,

your Honor, that if the argument is to be had tomorrow, I think their evidence is very slight on the defense and that could be reserved, a ruling made on that. I have no objection on that if counsel is willing.

Mr. Moore: That is all right.

Mr. Cades: With the understanding that it would be in no way prejudicial.

Mr. Moore: Yes.

Mr. Cades: There is one deposition.

Mr. Moore: We have no objection to the deposition which is to be admitted into evidence.

Mr. Cades: Would it save time if we would read the deposition into the testimony?

The Court: I think you can just file it. You have the right to read it.

Mr. Moore: I will stipulate that it has been read.

Mr. Cades: And it may be received without objection of the defendant as though read in evidence.

The Court: If that is agreeable, all right.

Mr. Cades: I have about two questions from Mr. Tennent and the case is ready.

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MR. HUGH COPPER TENNENT

resumes the witness stand.

By Mr. Cades:

Q. You have already been sworn, Mr. Tennent?

A. Yes, sir.

Q. Mr. Tennent, are you auditor for the Realty Investment Company, Limited? A. Yes.

(Testimony of Mr. Hugh Copper Tennent.)

Q. That is a Hawaiian corporation?

A. Yes, sir.

Q. You state for the purpose of the record whether that corporation has different stockholders than the Hilo Finance & Thrift Company?

A. It has entirely different stockholders and different directors.

Q. Its books are kept separately?

A. Its books are kept separately.

Q. And it has returns filed separately?

A. Filed separately. There are two separate companies, not linked in any way except by being operated out of the same office. Some of the executives are the same.

Q. Mr. Carey, testified that in spite of a perfect performance under note No. 9899 dated December 1, 1936, he was allowed a rebate of 82 whereas he should have been allowed a rebate of \$110. Do you know anything about that transaction?

A. May I see the note?

Q. The note?

A. I mean the stipulation.

Q. The stipulation as to payment?

A. Yes.

Mr. Cades: The witness is looking at defendant's exhibit 22-A it is the note No. 9899. It should be dated December 1, 1936.

A. These are the last two typed. It looked to me as if the one you have given me is not right.

Mr. Cades: Carey has testified under oath that

(Testimony of Mr. Hugh Copper Tennent.)

9995 has a perfect performance and counsel stipulated with me the dates there were a lapse in there about three months.

Mr. Moore: Here is the situation on that, may it please the court, and the situation was this, that in Honolulu there were certain dates that were put down in the ledger and there is a different date here in Hilo. I stipulated with Mr. Cades that he could put on here the Hilo dates, so that there is the situation on that.

Mr. Cades: That doesn't account for—Here is a mathematical problem. The only reason I call counsel's attention, 9995, if your Honor will recall, is one of the notes Mr. Carey testified had perfect performance, 13037. If your Honor will look down 2334 the payments are made one in February, and one April, and one in March and June and none in May, none in June and they pick up in July again. I just want the record to show it. Mr. Carey may have made a mistake.

Mr. Moore: May it please the court, here is the situation. Mr. Carey testified that from his ledger the due date from his note was April 2 or 6 and according to his ledger it was paid on April 30.

Mr. Cades: We asked him whether that included all installments and he said, yes. I said, you are sure of that, and he said, yes. I don't want to catch counsel by surprise. I want the facts to be correct before the court. (Argument.)

(Testimony of Mr. Hugh Copper Tennent.)

Mr. Moore: I will admit, Mr. Cades, for the purpose of this record that these two notes according to the stamped payment on the note each of these two notes, they both appear to be in default and in default further than the month in which they were to be paid.

Q. Mr. Tennent, I show you 8 cards that are headed George B. Carey and are designated as temporary loans. I will ask you to look at these cards and state to the court if you are familiar what they are? A. Yes.

Q. Will you explain what they are?

A. The finance company made temporary loans for which the charge there appears to be \$7 or is about 7 per cent same as about a bank rate.

Mr. Moore: I object to that.

Q. Just explain what the cards are?

A. They are entitled temporary loans and represent payments temporarily loaned by the Hilo Finance & Thrift Company to George B. Carey.

Q. These are part of the books of the original entry of this concern? A. Yes.

Q. That is on here the disbursements and the receipts as made are recorded originally?

A. Our record, yes.

Q. And these are books of original entry?

A. Yes.

Q. And these cards came from the ledger of this concern, you know that of your own knowledge?

A. Yes.

Q. Before introducing them, I will first introduce them in evidence.

(Testimony of Mr. Hugh Copper Tennent.)

Mr. Moore: May it please the court, we object to the introduction of these on the grounds that they are incompetent, irrelevant and immaterial, and having nothing to do with the notes here in trial.

The Court: It may be received in evidence.

Mr. Moore: Exception.

The Court: You may have an exception to all of these.

Mr. Moore: There will be a continuing objection and exception to all of this line of testimony.

Mr. Cades: Your Honor, please, counsel has stated to us that they raise no objection that they did not come from the proper custodian and treasurer.

Q. Will you examine these? From these ledger cards the amount of the loan is shown as the first item on each card? A. Yes.

Q. And the amount of interest is shown as payment of interest? A. Yes.

Q. And that was computed, the interest in the case of temporary loans was not deducted in advance, is that right? A. No.

Q. And it was computed at simple bank rates?

A. Simple bank rates.

Mr. Cades: That is all.

#### Cross-Examination

By Mr. Cass:

Q. Mr. Tennent, the other day when you were testifying, a hypothetical question was placed to you of what would happen if 14 or 13 notes had been ar-



(Testimony of Mr. Hugh Copper Tennent.)

ranged for to be paid back without any cash by the proceeds of other notes?

Mr. Cades: If Your Honor, please, this is highly improper cross-examination.

Mr. Cass: Just a moment, I am going into this examination as much in detail as you are. I am not cross-examining him.

Mr. Cades: Finish your question and I will note my objection.

Q. This hypothetical question you answered that after the 13th note there would be no money and thereafter the account would have to be renewed by new borrowings or by payment of cash to keep it in status quo, is that right?

Mr. Cades: Your Honor, please, I object. This witness has been put on purely for formal matters——

The Court: Do you want to reopen your case?

Mr. Cass: Your Honor, please, the subject of this account, this whole account this witness testified the other day was in accordance with an agreement.

The Court: That is right.

Mr. Cass: Which he reached back beyond that covered every running transaction in this detail.

The Court: That is correct.

Mr. Cass: When they put the witness back on the stand and started to ask him about that particular account and then the subject of that contract is open to cross-examination.

The Court: Yes, but Mr. Moore had the right at that time.

(Testimony of Mr. Hugh Copper Tennent.)

Mr. Cass: I have the right also on the reoponing. I would like to reopen that if the court will allow me to.

Mr. Cades: And you put the gentlemen on as your witness.

The Court: You may ask him. This is recross-examination.

Q. (By Mr. Cass): That is the situation in the hypothetical question, is it not?

A. You would have to go back and ask questions as they were before. I can't say, yes, to that.

Q. Would a series of computations on a note for \$1165 in which the payments run out in 13 payments, on the 14th note. A. On the 14th note.

Q. Thereafter the man got no more money for any extensions that he borrowed?

A. Yes, he continued therein on that basis.

Q. Now, in the actual transactions with Mr. Carey was there a time in this general loan agreement when that situation in fact existed that he had borrowed so much money on notes that he could no longer borrow on the same kind of notes without putting in additional money or repaying some of those notes?

A. I think you will find that once or twice that condition went along.

Q. For several months or a year or more?

A. Three or four months I imagine.

Q. And that at the end of that period or at the time when this last note was due and Mr. Carey had to borrow this money as you say he did, he could

(Testimony of Mr. Hugh Copper Tennent.)

have wiped out the entire borrowing by paying off all installments that were then due or that were represented on the note, could he not?

A. I don't quite understand the question. You mean he could have wiped out the \$6942.

Q. If he brought that into the office yes, plus the interest that had been charged on the note into the office, he could have wiped out the entire account, could he not?

A. Yes, of course if he brought the money in, sufficient money in to pay it.

Q. A letter is introduced in evidence here signed by you in which suggestion is made that the Hilo account be paid off. That letter was dated December 30, 1936.

Mr. Cades: Your Honor, please, that is a misstatement of the evidence.

Mr. Cass: Let's have the letter, please. The letter speaks for itself. Is this your letter, Mr. Tennent?

A. Yes, a letter signed by myself.

Q. In that letter I am reading: "I must ask you therefor to arrange to withdraw these contracts within the next few days by repaying all of the Hilo loans or at least that portion which is not covered by Hilo contracts." That was your suggestion?

A. I think the whole letter is a part of that. It is impossible to take four lines out to get the meaning.

Q. That is what you said to arrange to pay off the whole Hilo loan?

(Testimony of Mr. Hugh Copper Tennent.)

A. No, I'll read the whole letter and then the sense is carried.

Mr. Cades: Strictly, that is a motion to strike. The letter speaks for itself.

Q. If Judge cares to hear it Mr. Tennent can read it.

A. December 26, 1935 (Reads the letter.)

The Court: What do you want to ask him about the letter?

Mr. Cass: I asked him whether or not he didn't suggest to Mr. Carey to pay off the Hilo loan, and he said, it is contained in the letter. It is the understanding——

Mr. Cades: Wait a minute, he is going to explain.

The Court: Just a moment.

A. What the letter means is that Mr. Carey sent over contracts of some other item than Hawaii. The agreement with the Hilo Finance & Thrift was that it was to be local contracts of this Island, but he sent them over, the Hilo Finance & Thrift made that particular loan and when I went over there to audit the matter as an auditor of the Hilo Finance & Thrift Company, the matter was drawn to my attention or I found it in examining it—I couldn't tell you—but at any rate it was not in accordance with the agreement, so that letter is suggesting that that particular loan of \$2000, whatever it was \$330, be either paid off, that particular one, because the collateral was not the kind of collateral that he sent over, Hilo contracts, in exchange for the others. I

(Testimony of Mr. Hugh Copper Tennent.)

admit the way the Hilo loan should be paid off means that loan and the answer of the letter will show that. There was never any suggestion that the whole of the loan should be paid off because some of the collateral sent out was not——

Q. What do you mean by differentiating in this letter between all of the Hilo loans or at least that portion which is not covered by Hilo contracts?

A. Because some of the contracts sent out would be Hilo contracts, might be \$1000 of that \$2330.

Q. But all of the Hilo loan to your mind means to only so much that refers to the Honolulu contract?

A. That refers to one contract \$2330 but that particular loan, the collateral that was sent over with the loan was mostly of contracts from some other Island.

Mr. Cass: Well, the letter speaks for itself, Your Honor.

Q. Now, you have said that Mr. Carey had the privilege if he wanted to of coming in at any of these terms and putting the money down and redeeming all the notes and collateral, is that right?

A. Yes.

Q. Then, when at the end of this 13th month Mr. Carey, or whatever month it was, that Mr. Carey had exhausted his borrowing capacity without fresh money, if he had come in and put down the amount then, he could have taken all of his notes out with the collateral and that would have ended the loan?

A. He could have gotten his rebates.



(Testimony of Mr. Hugh Copper Tennent.)

Q. And the account then stated was the amount due on all the unpaid installments on the loans then in the hands of the Hilo Finance & Thrift Company?

A. I think if the note called for a 15 month loan he had come in and wanted to pay it off, the practice of the finance company was to rebate the interest.

Q. Yes, I wasn't speaking of that.

A. He could have got large rebates but he was due——

Q. To come there at any time and they would strike a balance of the amount that was due at that time and he would pay over the money?

A. Yes.

Q. In order to get an extension when you have to move that same amount of money forward a whole month he had to put in a new note which would pick up the oldest installment on all the notes in the Hilo Finance & Thrift Company and in addition thereto he would have to pay interest on the new note that he put in. I am asking what the agreement was?

Mr. Cades: I object if this is a hypothetical question.

A. There was no agreement that Mr. Carey should borrow every month. If he chose to come in and borrow that month, he could apply the payments the way he liked. If he wanted the cash he could take cash; if he didn't want cash he could apply it on some other notes and of course he could apply it on all kinds of notes. It was up to him.



(Testimony of Mr. Hugh Copper Tennent.)

Q. But in order to extend the note and move all bonds and notes, cancel old notes and put new notes in it, he had to pay the prepaid interest on the note, isn't that true?

A. There was no extending, as I see it, to extend the note. He came in with the new note and if all those payments were going to be applied on back notes, obviously he would have to pay the——

Q. He would have to pay then, at the beginning, he would have to pay on that note the amount of prepaid interest for that type of note that he put in?

A. It was well shown in the demonstration here.

Q. That would be in the case of, \$330 notes that he would have to prepay and now the next month that came along if he had done that when he put in a note he had to pay another \$330 and complete the process, is that right?

A. That is the way that he chose——

Q. That is the way he chose to do it and the way that it was done.

A. You can find out in some instances in your sheet probably where all the proceeds from the notes were applied on other notes. Therefore it was obvious that some payments was made to the company. I think we showed yesterday that if you took your example, you started to show that in this hypothetical case you would keep on loaning money for 13 months, the company never got a dime back. Obviously that point must come where the company is going to get something back in the way of interest.

Q. I was not disputing that, Mr. Tennent.

(Testimony of Mr. Hugh Copper Tennent.)

A. So that obviously otherwise the company would be loaning its money for nothing, so that if you took such a hypothetical case you would reach a point sometime where there must be some money going to the company.

Q. I was speaking to the actual thing that happened. When Mr. Carey didn't get any money by the raising of new loans, he paid \$330 and put in a new loan to cover the back installments, did he not?

A. I am sure you will find some instances here and there but it is by no means a constant occurrence at all.

Q. Now, you testified yesterday, Mr. Tennent, that the amount of interest, the lowest amount that you testified to on any of these loans was 14.1 per cent in anyway of figuring these loans of discount or otherwise?

Mr. Cades: We object, that is a misstatement, Your Honor. The rate was 14 per cent. (Argument.)

Mr. Cass: I agree, that is the statement. If rebates were allowed, it was 14 per cent.

Q. Now, Mr. Tennent, I will show you a carbon copy of a letter which apparently bears your initial and ask you if that is your letter?

A. That is my letter.

Mr. Cass: We offer in evidence the letter dated January 20, 1939, directed to the Hilo Finance & Thrift Company and signed by Tennent and Greaney, Mr. Tennent, president.

Mr. Cades: We object to the admissibility of the letter. It is nothing more than a statement of two

(Testimony of Mr. Hugh Copper Tennent.)

parties trying to settle the matter of a rebate.

(Argument) It will merely confuse the record even further.

Mr. Cass: The letter is offered to show that Mr. Tennent advised the Hilo Finance & Thrift Company that even after deducting all the rebates that might be allowable, the effective rate of all these loans were 16 per cent with a thirty-three and a third per cent rebate allowance.

The Court: I will allow that.

Mr. Cades: Exception, Your Honor.

Q. You are a certified public accountant, Mr. Tennent? A. Yes.

Q. And have been for many years? A. Yes.

Q. And for many years you have represented various finance and loan companies loaning money in the Territory? A. Yes, sir.

Q. You then are familiar with the laws concerning the interest rates that may be charged in the Territory of Hawaii? A. Yes.

Q. You knew then at the time that letter was written and at the time these loans were made it was a criminal offense for a finance company to loan at a rate of more than one per cent a month?

Mr. Cades: We object.

The Court: I will sustain that objection. That is a conclusion.

Q. And did you ever advise Mr. Carey that the effective rate of his loans were 16 per cent?

A. Very often. In talking over Mr. Carey's affairs with him I pointed out to him that his bor-

(Testimony of Mr. Hugh Copper Tennent.)

rowings from finance companies cost him compared with bank borrowings around that figure as would be borne by his auditor's books but that was, well for that 16 per cent this roughly where that figure comes from. Of course these interest rates if you are trying to pay 16 per cent and the 14, the 14 was on the calculation, you will get a slightly different result. I think I explained it in the testimony. So any time it was put in I would be entitled to digress on the letter, I didn't want any wrong instruction put on it, if I am entitled to it——

The Court: Yes, you can make any explanation you want to.

A. I didn't know that a dispute had arisen between Mr. Carey and the finance company about these rebates and when I found out that a dispute had arisen, I went down after discussing it with Mr. Carey and so on. I went down on my regular visit to Hilo and attempted to arbitrate between the two parties. They were both clients of mine and I wanted to straighten the matter out. The Hilo Finance & Thrift Company for two or three days refused to give these rebates in dispute, but finally the company through their executive, Mr. Hill, said okay, we will give Mr. Carey all the rebates provided Mr. Carey on his part makes a fair contribution or fair settlement towards the dispute, and I thought the matter was settled. So I came back and after discussing it with Mr. Carey or his assistant, these rebates I think that was almost amounting to around \$2000. Mr. Carey could have got those for

(Testimony of Mr. Hugh Copper Tennent.)

payment of around \$500. How the \$500 is referred to is covered in that letter but I said after leaving off so much for the delinquency, that we would consider these roughly as a monthly delinquency and we would consider that portion of the rebate would not be allowed. Mr. Cass, I have in my brief case made a similar proposal—if you would like to have that—by letter to them which he made the same propositions only he used a much higher or different rate of interest.

Mr. Cades: That letter that you refer to has been introduced in evidence. This exhibit Plaintiff's Exhibit K this witness was not present when it was introduced.

A. I was trying various ways of figuring to arrive at a figure that would be or we could settle this matter outside. So what I did was purely a matter of negotiating to try and get a figure of settlement.

Q. Now, Mr. Tennent, these special loans that you have the cards, are those loans made to Carey's Honolulu office, were they not?

A. I am not familiar with all of them but some of them I know were made for machines which came down from the Coast and were routed by Mr. Carey to here. Before he could lift the machines off the wharf—I may be wrong on this—before he lifted them off he had to get the money to get the things.

Q. You picked up the draft and let the machines come through?

A. The others are given for other purposes.

Q. But there are a couple of those loans in there that Mr. Carey endorsed, notes for his employees



(Testimony of Mr. Hugh Copper Tennent.)

and they finally were charged to him. But none of those special accounts had anything to do with the general financing agreement that you had originally to finance the Hilo office, did they? They were aside of the main agreement of financing which we have been going into here in court; they were another transaction. Funds from this may have been used to pay those but as far as the agreement for those notes that was a separate agreement from that of the general financing?

A. Yes, proceeds of those loans sometimes paid these and if possible some of these were borrowed to make up payments on these.

Q. But that list of loans which is a special side agreement is not part of the general picture of those loans?

A. Yes, sir.

Q. These notes that are sued upon have a peculiar clause. Have you ever noticed it; that there is no objection on the part of the Hilo Finance & Thrift Company that they become delinquent the minute a payment is missed? Had you noticed that clause in these notes?

A. I wouldn't be surprised there was a clause in there like that. I can say that but I don't think I have ever seen that. An installment agreement would not have such a clause in it.

Q. It does not have any objection on a default, does it?

A. I don't get your question.

Q. Read the clause referred to. (Reads the clause.)



(Testimony of Mr. Hugh Copper Tennent.)

The Court: No objection in there. That is fine.

Q. Now, in calculating the interest on the notes now before the court, particularly these 8 notes that are embodied in this complaint, did you figure the interest rate on those notes at all?

Mr. Cades: I take it we are back in the case in chief. Do you want to reopen on the case in chief?

The Court: I will let him answer the question.

A. Yes.

Q. Did you take into consideration the fact that that automatic default clause was in those notes?

A. No.

Q. And that the notes bear no interest whatsoever from——

A. What do you mean by the automatic default clause, the one you just read?

Q. The one I just read.

A. I never took that into consideration.

Q. Where there is no objection to a default or no objection to continuing the note, if the default on the part of the payee and the note becomes due at an earlier time than the face of the note by reason of that default, the interest rate for the term is charged, is it not?

A. I think you would have to put a lawyer on the stand.

Mr. Cades: Your Honor, please, that calls for a conclusion of law. (Argument.)

The Court: I will sustain that objection.

(Testimony of Mr. Hugh Copper Tennent.)

Q. But you haven't any idea what the interest on these notes is up the date of default considering that default as being the end of the term of the note?

Mr. Cades: Same objection because the law provides what happens in the event of default. (Argument.)

The Court: I think that is correct, Mr. Cass. I will sustain that objection.

Mr. Cass: That is all, Mr. Tennent.

Mr. Cades: That is all.

The Court: Thank you.

Mr. Cades: Let's see, we were on the defense of the counter-claim. We rest. And now we will renew our motion that the counter-claim be non-suited on the grounds that we have stated it and the situation of the record is this, that there is not only a motion for non-suit to rule on but there is still a motion for a demurrer which still raise the problems of law. (Argument.)

Mr. Cass: The court please, this argument does not concern my conduct in this case or the conduct of my associate. (Argument.)

(Discussions and arguments were had.)

The Court: We will take an adjournment until tomorrow morning at 9 o'clock.

(Arguments were had on the 26th day of June, 1943.)

This Is To Certify the foregoing to be a true and

full transcript of the proceedings had in the above entitled matter before the Honorable Ray J. O'Brien.

/s/ ANNABELLE KEKUNA,  
Court Reporter.

[Endorsed]: Filed Third Circuit Court July 10, 1944., W. R. Whittington, assistant clerk.

[Endorsed]: Filed July 21, 1944. Chas. H. K. Holt, clerk Supreme Court.

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DEFENDANT'S EXHIBIT 1

\$2,330.00

T. H., April 10, 1934

For Value Received, I promise to pay to the order of Hilo Finance and Thrift Co., Ltd., at its office, the sum of Twenty Three Hundred and Thirty and No/100 Dollars payable in installments and on such dates as indicated in the Schedule endorsed hereon.

And.....also promise to pay to the order of .....interest on the balance for the time being remaining unpaid, at the rate of.....per cent per annum, payable monthly, principal and interest payable net over and above all taxes.

In case of default in any payment of any installment of interest or principal, the entire debt with interest thereon after maturity at 10% per annum, shall immediately become due and payable at the option of the holder thereof. Should any suit for

collection be instituted the undersigned shall also pay the costs of collection including a reasonable attorney's fees.

Secured by collateral agreement and assignment of conditional sale agreement of same date.

/s/ GEO. B. CAREY,  
1112 Bethel St.,  
Address: Honolulu, T. H.

### Installment Note

(Stamped): Hilo Finance & Thrift Co., Ltd.  
Paid 7/24/35. By /s/ A. C. White.

### Endorsements on Back of Note Dated April 10, 1934

	Due Date	Install. Due		Due Date	Install.. Due
1	5/20/34.....	\$155.32	9	1/20/35.....	\$155.32
2	6/20/34.....	155.32	10	2/20/34.....	155.32
3	7/20/34.....	155.32	11	3/20/35.....	155.32
4	8/20/34.....	155.32	12	4/20/35.....	155.32
5	9/20/34.....	155.32	13	5/20/35.....	155.32
6	10/20/34.....	155.32	14	6/20/35.....	155.32
7	11/20/34.....	155.32	15	7/20/35.....	155.32
8	12/20/34.....	155.32			

Subject to rebate of \$54.36 interest if payments made on due date throughout.

## DEFENDANT'S EXHIBIT 1-A

Note No. 6743

Date of Note, 4/10/34. Date of Loan, 4/10/34

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....	1,611.70	
Paid on notes to Realty Investment Co.....	310.64	
Credited to pre-existing notes due to H. F. & T. Co., Ltd.....	77.66	2,330.00

## Payments received by Plaintiff:

Date	Amount	
5/12/34.....	\$155.32	
6/16/34.....	155.32	
7/18/34.....	155.32	
8/16/34.....	155.32	
9/22/34.....	155.32	
10/20/34.....	155.32	
11/10/34.....	155.32	
12/18/34.....	155.32	
1/23/35.....	155.32	
2/20/35.....	155.32	
3/22/35.....	155.32	
4/26/35.....	155.32	
5/22/35.....	155.32	
6/15/35.....	155.32	
7/24/35.....	155.32	
7/25/36.....	.20	
		2,330.00

Unpaid Balance of total loan or face  
of note.....

2,330.00

Rebate of interest paid to Defendant

7/24/35 .....

54.36

## DEFENDANT'S EXHIBIT 2

\$2,330.00

T. H., May 11, 1934.

For Value Received, I promise to pay to the order of Hilo Finance and Thrift Co., Ltd., Hilo Hawaii, at its office, the sum of Twenty Three Hundred Thirty and No/100 Dollars payable in installments and on such dates as indicated in the Schedule endorsed hereon.

And.....also promise to pay to the order of .....interest on the balance for the time being remaining unpaid, at the rate of.....per cent per annum, payable monthly, principal and interest payable net over and above all taxes.

In case of default in any payment of any installment of interest or principal, the entire debt with interest thereon after maturity at 10% per annum, shall immediately become due and payable at the option of the holder thereof. Should any suit for collection be instituted the undersigned shall also pay the costs of collection including a reasonable attorney's fees.

Secured by collateral agreement and assignment of conditional sale agreement of same date.

/s/ GEO. B. CAREY,

1112 Bethel St.,

Address: Honolulu, T. H.

Installment Note

(Stamped): Hilo Finance & Thrift Co.

Paid 8/21/35. By /s/A. C. White.



Endorsements on Back of Note of May 11, 1934

Amount of Note, \$2,330.00

Due		Install.		Due		Install..	
Date		Due		Date		Due	
1	6/20/34.....	\$155.32		8	1/20/35.....	\$155.32	
2	7/20/34.....	155.32		9	2/20/35.....	155.32	
3	8/20/34.....	155.32		10	3/20/35.....	155.32	
4	9/20/34.....	155.32		11	4/20/35.....	155.32	
5	10/20/34.....	155.32		12	5/20/35.....	155.32	
6	11/20/34.....	155.32		13	6/20/35.....	155.32	
7	12/20/34.....	155.32		14	7/20/35.....	155.32	
				15	8/20/35.....	155.32	

Subject to rebate of \$54.36 interest if payments made on due date throughout.

## DEFENDANT'S EXHIBIT 2-A

HILO FINANCE &amp; THRIFT CO., LTD.

Note No. 6845

Date of Note, 5/11/34. Date of Loan, 5/12/34

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....	1,456.38	
Paid on notes to Realty Investment Co.....	310.64	
Credited to pre-existing notes		
Due to H. F. & T. Co., Ltd.....	232.98	2,330.00
		<hr/> <hr/>

## Payments received by Plaintiff:

Date	Amount	
6/16/34.....	\$155.32	
7/18/34.....	155.32	
8/16/34.....	155.32	
9/22/34.....	155.32	
10/20/34.....	155.32	
11/19/34.....	155.32	
12/18/34.....	155.32	
1/23/35.....	155.32	
2/20/35.....	155.32	
3/22/35.....	155.32	
4/26/35.....	155.32	
5/22/35.....	155.32	
6/15/35.....	155.32	
7/24/35.....	155.32	
8/21/35.....	155.32	
	<hr/>	2,330.00
Unpaid Balance of total loan or face		
of note.....		<hr/>
		2,330.00
		<hr/> <hr/>
Rebate of interest paid to		
Defendant 8/21/35.....		54.36
		<hr/> <hr/>

In the Supreme Court of the Territory of Hawaii

No. 2579

GEORGE B. CAREY,

Petitioner,

vs.

HILO FINANCE & THRIFT CO., LTD.,

Respondent.

### STIPULATION

In this cause it is stipulated by and between the parties through their respective counsel for the purpose of abridging the transcript of the record herein on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, that the 32 notes, being Appellant's Exhibits 3 to 34 inclusive, the 4 notes referred to in Appellant's Exhibits 35A, 36A, 37A and 38A and the 8 notes, being Appellee's Exhibits A to H, inclusive, which are identical with the eight notes made Exhibits to the amended complaint are all in the sum of \$2330.00, each except Appellant's Exhibit 34, and the note referred in Appellant's Exhibit 37A, which are in the sum of \$1,165.00, that all notes are dated respectively, as follows: June 14, 1934, July 16, 1934, August 9, 1934, September 18, 1934, October 19, 1934, November 16, 1934, December 17, 1934, January 21, 1935, February 19, 1935, June 12, 1935, July 23, 1935, August 30, 1935, September 20, 1935, October 22, 1935, November 19, 1935, January 28, 1936, February 21, 1936, March 17, 1936, April 24, 1936, May

26, 1936, June 26, 1936, July 27, 1936, August 7, 1936, August 28, 1936, September 29, 1936, October 30, 1936, December 1, 1936, January 7, 1937, February 10, 1937, March 9, 1937, April 9, 1937, April 16, 1937, May 28, 1937, June 29, 1937, July 30, 1937, August 3, 1937, August 31, 1937, September 28, 1937, October 29, 1937, November 17, 1937, November 30, 1937, December 31, 1937, January 31, 1938, February 28, 1938; that all said notes were executed by appellant and made payable to appellee in 15 equal monthly installments, beginning the month the notes were executed or the following month and are on the following form:

Collateral Note

\$2330.00

For value received, I, we, or either of us, jointly and severally promise to pay to the order of Hilo Finance and Thrift Company, Ltd., of Hilo, Hawaii at their office the sum of Twenty Three Hundred Thirty and No/100 Dollars in 15 equal installments of \$155.32 each on the . . . . . of each month following the date of this note, with interest from maturity at the rate of . . . % per annum until paid with ten per cent additional on amount unpaid, if placed in the hands of an attorney for collection, having deposited with and pledged to said Finance Company, as collateral security for the payment of this note, and all other liabilities of the undersigned to the legal holder hereof, whether direct,

contingent, heretofore or hereafter contracted, the following property, to-wit:

Secured by collateral agreement and assignment of conditional sale agreement of same date.

Default in the payment of any installment hereon shall render the unpaid balance on this note due and payable, and the owner or holder hereof may at any time thereafter sell all or any part of said collateral at public or private sale, with or without notice of the time and place of sale and without notice of the time and place of sale and without demand of performance.

The owner or holder of this note may buy any of said collateral at said sale, and the proceeds of the sale shall be applied first to the payment of expenses of making such sale, including a reasonable attorney fee, if any attorney is employed; second, to the payment of the principal debt hereby secured and the interest thereon after deducting the unearned interest theretofore charged on the unmatured installments; third, to the payment of any other debt which the undersigned may now or hereafter owe the owner or holder of this note, either as principal, co-maker, surety, endorser, or otherwise, and if any surplus remains the same to be paid to the undersigned.

The makers, co-makers, endorsers, sureties or guarantors of this note each for himself, hereby severally agree to pay all costs of collecting or securing, or attempting to collect or secure, this note, including a reasonable attorney fee, whether the same be collected or secured by suit or otherwise, and severally waive demand, presentment,

protest and/or notice of protest, sale, demand or suit, and all other requirements necessary to hold them and agree that time of payment may be extended without notice to them of such extension. The owner or holder of this note is hereby authorized to apply, on or after maturity, to the payment of this note any funds in its possession belonging to the maker, co-maker, surety, endorser, guarantor or any one of them.

It is further stipulated by and between the parties that the words and figures appearing on the back side of each of the eight cards, being Appellee's Exhibit N, are irrelevant and may be omitted from the transcript as directed in the praecipe.

Dated at Honolulu, T. H., this the 31st day of July, 1947.

/s/ BRAHAN HOUSTON,

Attorney for

George B. Carey.

SMITH, WILD, BEEBE

& CADES,

Attorneys for Hilo Finance

and Thrift Company, Ltd.

By /s/ J. RUSSELL CADES.

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in the office of the clerk of the Supreme Court of the Territory of Hawaii.

Dated, at Honolulu, T. H., Aug. 2, 1947.

[Seal] /s/ LEOTI V. KRONE,

Clerk, Supreme Court,

Territory of Hawaii.



APPELLANT'S EXHIBIT 3-A

HILO FINANCE & THRIFT CO., LTD.

Note No. 6962

Date of Note, 6/14/34. Date of Loan, 6/16/34.

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....	1,301.06	
Paid on notes to Realty Investment Co.....	310.64	
Credited to pre-existing notes due to H. F. & T. Co., Ltd.....	388.30	2,330.00
		<hr/>

Payments received by Plaintiff:

Date	Amount	
7/18/34.....	\$155.32	
8/16/34.....	155.32	
9/22/34.....	155.32	
10/20/34.....	155.32	
11/19/34.....	155.32	
12/18/34.....	155.32	
1/23/35.....	155.32	
2/20/35.....	155.32	
3/22/35.....	155.32	
4/26/35.....	155.32	
5/22/35.....	155.32	
6/15/35.....	155.32	
7/24/35.....	155.32	
8/21/35.....	155.32	
9/23/35.....	155.52	
		<hr/>
		2,330.00

Unpaid Balance of total loan

or face of note .....	
	<hr/>
	\$2,330.00
	<hr/>

Rebate of interest paid to

Defendant, 9/23/35.....	54.36
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## APPELLANT'S EXHIBIT 4-A

HILO FINANCE &amp; THRIFT CO., LTD.

Note No. 7049

Date of Note, 7/18/34. Date of Loan, 7/18/34

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....	1,145.74	
Paid on notes to Realty Investment Co.....	310.64	
Credited to pre-existing notes due to H. F. & T. Co., Ltd.....	543.62	2,330.00

## Payments received by Plaintiff:

Date	Amount	
8/16/34.....	\$155.32	
9/22/34.....	155.32	
10/20/34.....	155.32	
11/19/34.....	155.32	
12/18/34.....	155.32	
1/23/35.....	155.32	
2/20/35.....	155.32	
3/22/35.....	155.32	
4/26/35.....	155.32	
5/22/35.....	155.32	
6/15/35.....	155.32	
7/24/35.....	155.32	
8/21/35.....	155.32	
9/23/35.....	155.32	
10/23/35.....	155.52	
		2,330.00

Unpaid Balance of total loan or

face of note.....

2,330.00

Rebate of interest paid to

Defendant, 10/23/35.....

54.36

APPELLANT'S EXHIBIT 5-A

HILO FINANCE & THRIFT CO., LTD.

Note No. 7118

Date of Note, 8/9/34. Date of Loan, 8/16/34.

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....	990.42	
Paid on notes to Realty Investment Co.....	310.64	
Credited to pre-existing notes due to H. F. & T. Co., Ltd.....	698.94	2,330.00
		<hr/> <hr/>

Payments received by Plaintiff:

Date	Amount	
9/22/34.....	\$155.32	
10/28/34.....	155.32	
11/19/34.....	155.32	
12/18/34.....	155.32	
1/23/35.....	155.32	
2/30/35.....	155.32	
3/22/35.....	67.98	
3/28/35.....	68.34	
4/26/35.....	155.32	
5/22/35.....	155.32	
6/15/35.....	155.32	
7/24/35.....	155.32	
8/21/35.....	155.32	
9/23/35.....	155.32	
10/23/35.....	155.32	
11/20/35.....	155.32	
		<hr/>
		2,330.00

Unpaid Balance of total loan or  
face of note.....

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\$2,330.00

Rebate of interest paid to

Defendant, 11/20/35..... 54.36

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## APPELLANT'S EXHIBIT 6-A

HILO FINANCE &amp; THRIFT CO., LTD.

Note No. 7252

Date of Note, 9/18/34. Date of Loan, 9/22/34.

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....	835.10	
Paid on notes to Realty Investment Co.....	310.64	
Credited to pre-existing notes due to H. F. & T. Co., Ltd.....	854.26	2,330.00
		<hr/> <hr/>

## Payments received by Plaintiff:

Date	Amount	
10/20/34.....	\$155.32	
11/19/34.....	155.32	
12/18/34.....	155.32	
1/23/35.....	155.32	
2/20/35.....	155.32	
3/28/35.....	155.32	
4/26/35.....	155.32	
5/22/35.....	67.98	
5/29/35.....	87.34	
6/15/35.....	155.32	
7/24/35.....	155.32	
8/21/35.....	155.32	
9/23/35.....	155.32	
10/23/35.....	155.32	
11/20/35.....	155.32	
12/31/35.....	155.52	
		<hr/>
		2,330.00

Unpaid Balance of total loan or  
face of note.....

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\$2,330.00

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Rebate of interest paid to

Defendant, 12/31/35.....

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54.36

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APPELLANT'S EXHIBIT 7-A

HILO FINANCE & THRIFT CO., LTD.

Note No. 7339

Date of Note, 10/19/34. Date of Loan, 10/20/34

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....	679.78	
Paid on notes to Realty Investment Co.....	310.64	
Credited to pre-existing notes due to H. F. & T. Co., Ltd.....	1,009.58	2,330.00

Payments received by Plaintiff:

Date	Amount	
11/19/34.....	\$155.32	
12/18/34.....	155.32	
1/23/35.....	155.32	
2/20/35.....	155.32	
3/28/35.....	155.32	
4/26/35.....	155.32	
5/29/35.....	155.32	
6/15/35.....	155.32	
7/24/35.....	155.32	
8/21/35.....	155.32	
9/23/35.....	155.32	
10/23/35.....	155.32	
11/20/35.....	155.32	
12/31/35.....	155.32	
1/28/36.....	155.32	
		2,330.00

Unpaid Balance of total loan or  
face of note.....

Rebate of interest paid to

Defendant, 1/28/36..... 54.36

## APPELLANT'S EXHIBIT 8-A

HILO FINANCE &amp; THRIFT CO., LTD.

Note No. 7428

Date of Note, 11/16/34.      Date of Loan, 11/19/34

Total Loan or face of Note .....		\$2,330.00
Interest deducted in advance .....	\$ 330.00	
Cash received by Defendant.....	524.46	
Paid on notes to Realty Investment Co.....	310.64	
Credited to pre-existing notes due to H. F. & T. Co., Ltd.....	1,164.90	2,330.00

## Payments received by Plaintiff:

Date	Amount
12/18/34.....	\$155.32
1/23/35.....	155.32
2/20/35.....	155.32
3/28/35.....	155.32
4/26/35.....	77.56
4/30/35.....	77.76
5/29/35.....	155.32
6/15/35.....	155.32
7/24/35.....	155.32
8/21/35.....	155.32
9/23/35.....	155.32
10/23/35.....	155.32
11/20/35.....	155.32
12/31/35.....	155.32
1/28/36.....	155.32
2/24/36.....	155.52

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 2,330.00

 Unpaid Balance of total loan or  
face of note.....

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 \$2,330.00

Rebate of interest paid to

Defendant, 2/24/36.....

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 54.36
 

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APPELLANT'S EXHIBIT 9-A

HILO FINANCE & THRIFT CO., LTD.

Note No. 7559

Date of Note, 12/17/34. Date of Loan, 12/18/34.

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....	369.14	
Paid on notes to Realty Investment Co.....	310.64	
Credited to pre-existing notes due to H. F. & T. Co., Ltd.....	1,320.22	2,330.00
	<hr/>	<hr/> <hr/>

Payments received by Plaintiff:

Date	Amount	
1/23/35.....	\$155.32	
2/20/35.....	155.32	
3/28/35.....	155.32	
4/30/35.....	155.32	
5/29/35.....	155.32	
6/15/35.....	155.32	
7/24/35.....	155.32	
8/21/35.....	155.32	
9/23/35.....	155.32	
10/23/35.....	155.32	
11/20/35.....	155.32	
12/31/35.....	155.32	
1/28/36.....	155.32	
2/24/36.....	155.32	
3/18/36.....	155.32	
	<hr/>	2,330.00

Unpaid Balance of total loan or  
face of note .....

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\$2,330.00

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Rebate of interest paid to

Defendant, 2/18/36.....

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54.36

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## APPELLANT'S EXHIBIT 10-A

HILO FINANCE &amp; THRIFT CO., LTD.

Note No. 7657

Date of Note, 1/21/35. Date of Loan, 1/23/35.

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....	213.82	
Paid on notes to Realty Investment Co.....	310.64	
Credited to pre-existing notes		
due to H. F. & T. Co., Ltd.....	1,475.54	2,330.00

## Payments received by Plaintiff:

Date	Amount
2/20/35.....	\$155.32
3/28/35.....	155.32
4/30/35.....	155.32
5/29/35.....	155.32
6/15/35.....	155.32
7/24/35.....	155.32
8/21/35.....	155.32
9/23/35.....	155.32
10/23/35.....	155.32
11/20/35.....	155.32
12/31/35.....	155.32
1/28/36.....	155.32
2/24/36.....	155.32
3/18/36.....	155.32
4/25/36.....	155.52

2,330.00

Unpaid Balance of total loan or  
face of note.....

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\$2,330.00

Rebate of interest paid

to Defendant 4/25/36.....

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\$ 54.36

APPELLANT'S EXHIBIT 11-A

HILO FINANCE & THRIFT CO., LTD.

Note No. 7757

Date of Note, 2/19/35. Date of Loan, 2/20/35.

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....	58.40	
Paid on notes to Realty Investment Co.....	310.74	
Credited to pre-existing notes due to H. F. & T. Co., Ltd.....	1,630.86	2,330.00
		<u><u>\$2,330.00</u></u>

Payments received by Plaintiff:

Date	Amount	
3/28/35.....	\$155.32	
4/30/35.....	155.32	
5/29/35.....	155.32	
6/15/35.....	155.32	
7/24/35.....	155.32	
8/21/35.....	155.32	
9/23/35.....	155.32	
10/23/35.....	155.32	
11/20/35.....	155.32	
12/31/35.....	155.32	
1/28/36.....	155.32	
2/24/36.....	155.32	
3/18/36.....	155.32	
4/25/36.....	155.32	
5/27/36.....	155.32	
		<u>2,330.00</u>

Unpaid Balance of total loan or  
face of note.....

\$2,330.00

Rebate of interest paid to

Defendant, 5/27/36.....

\$ 54.36

## APPELLANT'S EXHIBIT 12-A

HILO FINANCE &amp; THRIFT CO., LTD.

Note No. 8132

Date of Note, 6/12/35. Date of Loan, 6/15/35.

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....	213.72	
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes due to H. F. & T. Co., Ltd.....	1,786.28	2,330.00

## Payments received by Plaintiff:

Date	Amount
7/24/35.....	\$155.32
8/21/35.....	155.32
9/23/35.....	155.32
10/23/35.....	155.32
11/20/35.....	155.32
12/31/35.....	155.32
1/28/36.....	155.32
2/24/36.....	155.32
3/18/36.....	155.32
4/25/36.....	155.32
5/27/36.....	155.32
6/27/36.....	155.32
7/29/36.....	155.32
8/29/36.....	155.32
9/30/36.....	155.32
9/30/36.....	.20

Unpaid Balance of total loan or face of note.....	2,330.00
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\$2,330.00

Rebate of interest paid to

Defendant, 9/30/36, cash.....

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\$ 82.30

By credit on another note.....

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\$ .20

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APPELLANT'S EXHIBIT 13-A

HILO FINANCE & THRIFT CO., LTD.

Note No. 8250

Date of Note, 7/23/35.      Date of Loan, 7/24/35.

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....	135.96	
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes due		
to H. F. & T. Co., Ltd.....	1,864.04	2,330.00
	<hr/>	<hr/>

Payments received by Plaintiff:

Date	Amount	
8/21/35.....	\$155.32	
9/23/35.....	155.32	
10/23/35.....	155.32	
11/20/35.....	155.32	
12/31/35.....	155.32	
1/28/36.....	155.32	
4/25/36.....	155.32	
5/27/36.....	155.32	
6/27/36.....	155.32	
7/29/36.....	155.32	
8/29/36.....	155.32	
9/30/36.....	155.32	
10/31/36.....	155.32	
	<hr/>	2,330.00

Unpaid Balance of total loan or  
face of note.....

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\$2,330.00  

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Rebate of interest paid to

Defendant, 8/31/36.....      \$ 82.50  

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## APPELLANT'S EXHIBIT 14-A

HILO FINANCE &amp; THRIFT CO., LTD.

Note No. 8332

Date of Note, 8/20/35. Date of Loan, 8/21/35.

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....	135.96	
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes due to H. F. & T. Co., Ltd.....	1,864.04	2,330.00

## Payments received by Plaintiff:

Date	Amount	
9/23/35.....	\$155.32	
10/23/35.....	155.32	
11/20/35.....	155.32	
12/31/35.....	155.32	
1/28/36.....	155.32	
2/24/36.....	155.32	
3/18/36.....	155.32	
4/25/36.....	155.32	
5/27/36.....	155.32	
6/27/36.....	155.32	
7/29/36.....	155.32	
8/29/36.....	155.32	
9/30/36.....	155.32	
10/31/36.....	155.32	
12/16/36.....	155.52	
		2,330.00
Unpaid Balance of total loan or face of note.....		
		\$2,330.00
Rebate of interest paid to Defendant, 12/16/36 .....		\$ 82.50



## APPELLANT'S EXHIBIT 15-A

HILO FINANCE &amp; THRIFT CO., LTD.

Note No. 8443

Date of Note, 9/20/35. Date of Loan, 9/23/35.

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....	135.96	
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes due		
to H. F. & T. Co., Ltd.....	1,864.04	2,330.00

## Payments received by Plaintiff:

Date	Amount	
10/23/35.....	\$155.32	
11/20/35.....	155.32	
12/31/35.....	155.32	
1/28/36.....	155.32	
2/24/36.....	155.32	
3/18/36.....	155.32	
4/25/36.....	155.32	
5/27/36.....	155.32	
6/27/36.....	155.32	
7/29/36.....	155.32	
8/29/36.....	155.32	
9/30/36.....	155.32	
10/31/36.....	155.32	
12/16/36.....	155.32	
1/9/37.....	155.52	
		2,330.00

Unpaid Balance of total loan  
of face of note.....

\$2,330.00

Rebate of interest paid to

Defendant, 1/9/37.....

\$ 82.50

## APPELLANT'S EXHIBIT 16-A

HILO FINANCE &amp; THRIFT CO., LTD.

Note No. 8538

Date of Note, 10/22/35. Date of Loan, 10/23/35

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....	135.96	
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes due to H. F. & T. Co., Ltd.....	1,864.04	2,330.00

## Payments received by Plaintiff:

Date	Amount
11/20/35.....	\$155.32
12/31/35.....	155.32
1/28/36.....	155.32
2/24/36.....	155.32
3/18/36.....	155.32
4/25/36.....	155.32
5/27/36.....	155.32
6/27/36.....	155.32
7/29/36.....	155.32
8/29/36.....	155.32
9/30/36.....	155.32
10/31/36.....	155.32
12/16/36.....	155.32
1/9/37.....	155.32
2/10/37.....	155.52

Unpaid Balance of total loan  
or face of note.....

2,330.00

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 \$2,330.00
 

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Rebate of interest paid to

Defendant, 2/10/37.....

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 \$ 82.50
 

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APPELLANT'S EXHIBIT 17-A

HILO FINANCE & THRIFT CO., LTD.

Note No. 8267

Date of Note, 11/19/35. Date of Loan, 11/20/35.

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....	135.96	
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes due to H. F. & T. Co., Ltd.....	1,864.04	2,330.00
	<hr/>	<hr/> <hr/>

Payments received by Plaintiff:

Date	Amount	
12/31/35.....	\$155.32	
1/28/36.....	155.32	
2/24/36.....	155.32	
3/18/36.....	155.32	
4/25/36.....	155.32	
5/27/36.....	155.32	
6/27/36.....	155.32	
7/29/36.....	155.32	
8/29/36.....	155.32	
9/30/36.....	155.32	
10/31/36.....	155.32	
12/16/36.....	155.32	
1/9/37.....	155.32	
2/10/37.....	155.32	
3/10/37.....	155.52	
	<hr/>	2,330.00

Unpaid Balance of total loan or  
face of note .....

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\$2,330.00

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Rebate on interest paid to

Defendant, 3/10/37..... \$ 82.50

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## APPELLANT'S EXHIBIT 18-A

HILO FINANCE &amp; THRIFT CO., LTD.

Note No. 8845

Date of Note, 1/28/36. Date of Loan, 1/28/36

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....	291.28	
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes due		
to H. F. & T Co., Ltd.....	1,708.72	2,330.00

## Payments received by Plaintiff:

Date	Amount	
2/24/36.....	155.32	
3/18/36.....	155.32	
4/25/36.....	155.32	
5/27/36.....	155.32	
6/27/36.....	155.32	
7/29/36.....	155.32	
8/29/36.....	155.32	
9/30/36.....	155.32	
10/31/36.....	155.32	
12/16/36.....	155.32	
1/9/37.....	155.32	
3/10/37.....	155.32	
4/12/37.....	155.52	
5/29/37.....	155.32	
		2,330.00
Unpaid Balance of total loan or		
face of note.....		
		\$2,330.00
Rebate of interest paid to		
Defendant, 5/29/37.....		\$ 82.50

APPELLANT'S EXHIBIT 19-A

HILO FINANCE & THRIFT CO., LTD.

Note No. 8926

Date of Note, 2/24/36. Date of Loan, 2/24/36.

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....	291.28	
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes due to H. F. & T. Co., Ltd.....	1,708.72	2,330.00

Payments received by Plaintiff:

Date	Amount	
3/18/36.....	\$155.32	
4/25/36.....	155.32	
5/27/36.....	155.32	
6/27/36.....	155.32	
7/29/36.....	155.32	
8/29/36.....	155.32	
9/30/36.....	155.32	
10/31/36.....	155.32	
12/16/36.....	155.32	
1/9/37.....	155.32	
2/10/37.....	155.32	
3/10/37.....	155.32	
4/12/37.....	155.32	
5/29/37.....	155.52	
7/1/37.....	155.32	
		2,330.00

Unpaid Balance of total loan or  
face of note.....

\$2,330.00

Rebate of interest paid to

Defendant, 7/1/37.....

\$ 82.50

## APPELLANT'S EXHIBIT 20-A

HILO FINANCE &amp; THRIFT CO., LTD.

Note No. 9019

Date of Note, 3/17/36. Date of Loan, 3/18/36.

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....	46.88	
Paid on notes of John A. Howard.....	123.00	
John A. Howard, Jr.....	121.40	
Credited to pre-existing notes due		
to H. F. & T Co., Ltd.....	1,708.72	2,330.00

## Payments received by Plaintiff:

Date	Amount	
4/25/36.....	\$155.32	
6/27/36.....	155.32	
7/29/36.....	155.32	
8/29/36.....	155.32	
9/30/36.....	155.32	
10/31/36.....	155.32	
12/16/36.....	155.32	
1/9/37.....	155.32	
2/10/37.....	155.32	
3/10/37.....	155.32	
4/12/37.....	155.32	
5/29/37.....	155.32	
7/1/37.....	155.32	
8/3/37.....	155.52	
		2,330.00
Unpaid Balance of total loan or		
face of note.....		
		\$2,330.00
Rebate of interest paid to		
Defendant, 8/3/37.....		\$ 82.50



APPELLANT'S EXHIBIT 21-A

HILO FINANCE & THRIFT CO., LTD.

Note No. 9133

Date of Note, 4/24/36. Date of Loan, 4/25/36.

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....	164.78	
Cash paid on temporary loan.....	126.50	
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes due to H. F. & T. Co., Ltd.....	1,708.72	2,330.00

Payments received by Plaintiff:

Date	Amount	
5/27/36.....	\$155.32	
2/27/36.....	155.32	
7/29/36.....	155.32	
8/29/36.....	155.32	
9/30/36.....	155.32	
10/31/36.....	155.32	
12/16/36.....	155.32	
1/9/37.....	155.32	
2/10/37.....	155.32	
3/10/37.....	155.32	
4/12/37.....	155.32	
5/29/37.....	155.32	
7/1/37.....	155.32	
8/3/37.....	155.32	
9/1/37.....	155.52	
		2,330.00

Unpaid Balance of total loan or  
face of note.....

\$2,330.00

Rebate of interest paid to

Defendant, 9/1/37..... \$ 82.50

## APPELLANT'S EXHIBIT 22-A

HILO FINANCE &amp; THRIFT CO., LTD.

Note No. 9222

Date of Note, 5/26/36. Date of Loan, 5/27/36.

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....	291.28	
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes due to H. F. & T. Co., Ltd.....	1,708.72	2,330.00

## Payments received by Plaintiff:

Date	Amount
6/27/36.....	\$155.32
7/29/36.....	155.32
8/29/36.....	155.32
9/30/36.....	155.32
10/31/36.....	155.32
12/16/36.....	155.32
1/9/37.....	155.32
2/10/37.....	155.32
3/10/37.....	155.32
4/12/37.....	155.32
5/29/37.....	155.32
7/1/37.....	155.32
8/3/37.....	155.32
9/1/37.....	155.32
10/10/37.....	155.52

2,330.00

Unpaid Balance of total loan or  
face of note .....

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\$2,330.00

Rebate of interest paid

to Defendant, 10/2/37.....

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\$ 82.50

APPELLANT'S EXHIBIT 23-A

HILO FINANCE & THRIFT CO., LTD.

Note No. 9353

Date of Note, 6/26/36. Date of Loan, 6/27/36

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....	291.48	
Paid on notes to Reatly Investment Co.....		
Credited to pre-existing notes due to		
H. F. & T. Co., Ltd.....	1,708.52	2,330.00

Payments received by Plaintiff:

Date	Amount	
7/29/36.....	\$155.32	
8/29/36.....	155.32	
9/30/36.....	155.32	
10/31/36.....	155.32	
12/16/36.....	155.32	
1/9/37.....	155.32	
2/10/37.....	155.32	
3/10/37.....	155.32	
4/12/37.....	155.32	
5/29/37.....	155.32	
7/1/37.....	155.32	
8/3/37.....	155.32	
9/1/37.....	155.32	
10/1/37.....	155.32	
11/2/37.....	155.52	
		2,330.00

Unpaid Balance of total loan or  
face of note.....

\$2,330.00

Rebate of interest paid to

Defendant, 11/2/37..... \$ 82.50

## APPELLANT'S EXHIBIT 24-A

HILO FINANCE &amp; THRIFT CO., LTD.

Note No. 9455

Date of Note, 7/27/36. Date of Loan, 7/29/36

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....	136.16	
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes due to		
H. F. & T. Co., Ltd.....	1,863.84	2,330.00

## Payments received by Plaintiff:

Date	Amount	
8/29/36.....	\$136.16	
9/9/36.....	18.16	
9/30/36.....	20.16	
9/30/36.....	136.16	
10/31/36.....	19.36	
10/31/36.....	135.96	
12/16/36.....	19.36	
12/16/36.....	135.96	
1/9/37.....	155.32	
2/10/37.....	155.32	
3/10/37.....	155.32	
4/12/37.....	155.32	
5/29/37.....	155.32	
7/1/37.....	155.32	
8/3/37.....	155.32	
9/1/37.....	155.32	
10/1/37.....	155.32	
11/2/37.....	155.32	
12/3/37.....	155.52	
		2,330.00
Unpaid Balance of total loan or		
face of note.....		
		<u>\$2,330.00</u>
Rebate of interest paid to		
Defendant, 12/2/37 .....		\$ 82.50

APPELLANT'S EXHIBIT 25-A

HILO FINANCE & THRIFT CO., LTD.

Note No. 9483

Date of Note, 8/7/36. Date of Loan, 8/7/36.

Total Loan or face of Note.....	\$2,330.00
Interest deducted in advance.....	\$ 330.00
Cash received by Defendant.....	2,000.00
Paid on notes to Realty Investment Co.....	
Credited to pre-existing notes due to	
H. F. & T. Co., Ltd.....	2,330.00

Payments received by Plaintiff:

Date	Amount	
9/30/36.....	\$155.32	
10/31/36.....	155.32	
12/16/36.....	155.32	
1/9/37.....	155.32	
2/10/37.....	155.32	
3/10/37.....	155.32	
4/12/37.....	155.32	
5/29/37.....	155.32	
7/1/37.....	155.32	
8/3/37.....	155.32	
9/1/37.....	155.32	
10/1/37.....	155.32	
11/2/37.....	155.32	
12/2/37.....	155.32	
1/4/38.....	155.52	
		2,330.00

Unpaid Balance of total loan or  
face of note .....

\$2,330.00

Rebate of interest paid to

Defendant, 1/4/38..... \$ 82.50

## APPELLANT'S EXHIBIT 26-A

HILO FINANCE &amp; THRIFT CO., LTD.

Note No. 9546

Date of Note, 8/28/36. Date of Loan, 8/29/36.

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....		
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes due to		
H. F. & T. Co., Ltd.....	2,000.00	2,330.00

## Payments received by Plaintiff:

Date	Amount	
9/30/36.....	\$155.32	
10/31/36.....	155.32	
12/16/36.....	155.32	
1/9/37.....	155.32	
2/10/37.....	155.32	
3/10/37.....	155.32	
4/12/37.....	155.32	
5/29/37.....	155.32	
7/1/37.....	155.32	
8/3/37.....	155.32	
9/1/37.....	155.32	
10/1/37.....	155.32	
11/2/37.....	155.32	
12/2/37.....	155.32	
1/4/38.....	155.52	
		2,330.00

Unpaid Balance of total loan or  
face of note.....

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\$2,330.00

Rebate of interest paid to

Defendant, 1/4/38.....

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\$ 82.50



APPELLANT'S EXHIBIT 27-A

HILO FINANCE & THRIFT CO., LTD.

Note No. 9621

Date of Note, 9/29/36. Date of Loan, 9/30/36.

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash Received by Defendant.....		
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes due to		
H. F. & T. Co., Ltd.....	2,000.00	2,330.00

Payments received by Plaintiff:

Date	Amount	
10/31/36.....	\$155.32	
12/16/36.....	155.32	
1/9/37.....	19.36	
1/9/37.....	135.96	
2/10/37.....	155.32	
3/10/37.....	155.32	
4/12/37.....	155.32	
5/29/37.....	155.32	
7/1/37.....	155.32	
8/3/37.....	155.32	
9/1/37.....	155.32	
10/1/37.....	155.32	
11/2/37.....	155.32	
12/2/37.....	155.32	
1/4/38.....	155.32	
2/2/38.....	155.52	
		2,330.00

Unpaid Balance of total loan  
or face of note.....

\$2,330.00

Rebate of interest paid to

Defendant, 2/2/38..... \$ 82.50

## APPELLANT'S EXHIBIT 28-A

HILO FINANCE &amp; THRIFT CO., LTD.

Note No. 9706

Date of Note, 10/30/36. Date of Loan, 10/31/36.

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....\$	330.00	
Cash received by Defendant.....		
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes		
due to H. F. & T. Co., Ltd.....	2,000.00	2,330.00
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## Payments received by Plaintiff:

Date	Amount	
12/16/36.....	\$155.32	
1/9/37.....	155.32	
2/10/37.....	19.36	
2/10/37.....	135.96	
3/10/37.....	155.32	
4/12/37.....	155.32	
5/29/37.....	155.32	
7/1/37.....	155.32	
8/3/37.....	155.32	
9/1/37.....	155.32	
10/1/37.....	155.32	
11/2/37.....	155.32	
12/2/37.....	155.32	
1/4/38.....	155.32	
2/2/38.....	155.32	
3/8/38.....	155.52	
	<hr/>	2,330.00
Unpaid Balance of total loan or		
face of note.....		
		<hr/>
		\$2,330.00
		<hr/>
Rebate of interest paid to		
Defendant, 3/8/38.....		\$ 82.50
		<hr/>

APPELLANT'S EXHIBIT 29-A

HILO FINANCE & THRIFT CO., LTD.

Note No. 9899

Date of Note, 12/1/36. Date of Loan, 12/16/37.

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....		
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes due to H. F. & T. Co., Ltd.....	2,000.00	2,330.00

Payments received by Plaintiff:

Date	Amount	
1/9/37.....	\$155.32	
2/10/37.....	155.32	
3/10/37.....	19.32	
3/10/37.....	135.96	
4/12/37.....	155.36	
4/29/37.....	155.32	
7/1/37.....	155.32	
8/3/37.....	155.32	
9/1/37.....	155.32	
10/1/37.....	155.32	
11/2/37.....	155.32	
12/2/37.....	155.32	
1/4/38.....	155.32	
2/2/38.....	155.32	
3/8/38.....	155.32	
4/6/38.....	155.52	
		2,330.00

Unpaid Balance of total loan or  
face of note .....

Rebate of interest paid to

Defendant, 4/6/38..... \$ 82.50

## APPELLANT'S EXHIBIT 30-A

HILO FINANCE &amp; THRIFT CO., LTD.

Note No. 9995

Date of Note, 1/7/37. Date of Loan, 1/9/37.

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....		
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes due to		
H. F. & T. Co., Ltd.....	2,000.00	2,330.00

## Payments received by Plaintiff:

Date	Amount	
2/10/37.....	\$155.32	
1/10/37.....	155.32	
4/12/37.....	19.36	
4/12/37.....	135.96	
7/1/37.....	155.32	
8/3/37.....	155.32	
9/1/37.....	155.32	
10/1/37.....	155.32	
11/2/37.....	155.32	
12/2/37.....	155.32	
1/4/38.....	155.32	
2/2/38.....	155.32	
3/8/38.....	155.32	
4/6/38.....	155.32	
5/4/38.....	155.32	
7/14/38.....	155.52	
		2,330.00
Unpaid Balance of total loan or		
face of note.....		
		\$2,330.00
Rebate of interest paid to Defendant.....		

APPELLANT'S EXHIBIT 31-A

HILO FINANCE & THRIFT CO., LTD.

Note No. 114

Date of Note, 2/10/37. Date of Loan, 2/10/37.

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant .....		
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes due to H. F. & T. Co., Ltd.....	2,000.00	2,330.00

Payments received by Plaintiff:

Date	Amount	
3/10/37.....	\$155.32	
4/12/37.....	155.32	
5/29/37.....	155.32	
6/30/37.....	19.16	
7/1/37.....	136.16	
8/3/37.....	155.32	
9/1/37.....	155.32	
10/1/37.....	155.32	
11/2/37.....	155.32	
12/2/37.....	155.32	
1/4/38.....	155.32	
2/2/38.....	155.32	
3/8/38.....	155.32	
4/6/38.....	155.32	
5/4/38.....	155.32	
7/14/38.....	155.32	
		2,330.00

Unpaid Balance of total loan or  
face of note .....

\$2,330.00

Rebate of interest paid to Defendant.....

## APPELLANT'S EXHIBIT 32-A

HILO FINANCE &amp; THRIFT CO., LTD.

Note No. 214

Date of Note, 3/10/37. Date of Loan, 3/10/37.

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....		
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes due to		
H. F. & T. Co., Ltd.....	2,000.00	2,330.00

## Payments received by Plaintiff:

Date	Amount
4/12/37.....	\$155.32
5/29/37.....	155.32
6/30/37.....	155.32
8/3/37.....	19.36
8/3/37.....	135.96
9/1/37.....	155.32
10/1/37.....	155.32
11/2/37.....	155.32
12/2/37.....	155.32
1/4/38.....	155.32
2/2/38.....	155.32
3/9/38.....	155.32
6/6/38.....	155.32
5/4/38.....	155.32
7/14/38.....	155.32
8/27/38.....	155.52

2,330.00

Unpaid Balance of total loan or  
face of note.....

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\$2,330.00

Rebate of interest paid to Defendant.....

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## APPELLANT'S EXHIBIT 33-A

HILO FINANCE &amp; THRIFT CO., LTD.

Note No. 344

Date of Note, 4/9/37. Date of Loan, 4/12/37.

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....		
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes due to		
H. F. & T. Co., Ltd.....	2,000.00	2,330.00

## Payments received by Plaintiff:

Date	Amount	
5/29/37.....	\$ 19.36	
5/29/37.....	135.96	
6/30/37.....	155.32	
9/1/37.....	19.36	
9/1/37.....	135.96	
10/1/37.....	155.32	
11/2/37.....	155.32	
12/2/37.....	155.32	
1/4/38.....	155.32	
2/2/38.....	155.32	
3/8/38.....	155.32	
4/6/38.....	155.32	
5/4/38.....	155.32	
7/14/38.....	155.32	
8/27/38.....	155.52	
		2,330.00

Unpaid Balance of total loan or  
face of note.....

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\$2,330.00

Rebate of interest paid to Defendant.....

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## APPELLANT'S EXHIBIT 34-A

HILO FINANCE &amp; THRIFT CO., LTD.

Note No. 370

Date of Note, 4/16/37. Date of Loan, 4/17/37.

Total Loan or face of Note.....	\$1,165.00
Interest deducted in advance.....\$	165.00
Cash received by Defendant.....	1,000.00
Paid on notes to Realty Investment Co.....	
Credited to pre-existing notes due to H. F. & T. Co., Ltd.....	1,165.00

## Payments received by Plaintiff:

Date	Amount
6/30/37.....	\$155.32
8/3/37.....	77.66
9/1/37.....	77.66
10/1/37.....	77.66
11/2/37.....	77.66
12/2/37.....	77.66
1/4/38.....	77.66
2/2/38.....	77.66
3/8/38.....	77.66
4/6/38.....	77.66
5/4/38.....	77.66
7/14/38.....	77.66
8/27/38.....	77.66
9/28/38.....	77.66
	2,330.00

Unpaid Balance of total loan or  
face of note.....

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\$2,330.00

Rebate of interest paid to Defendant.....

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APPELLANT'S EXHIBIT 35-A

HILO FINANCE & THRIFT CO., LTD.

Note No. 491

Date of Note, 5/28/37. Date of Loan, 5/29/37.

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....		
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes due to		
H. F. & T. Co., Ltd.....	2,000.00	2,330.00
	<hr/>	<hr/>

Payments received by Plaintiff:

Date	Amount	
6/30/37.....	\$155.32	
8/5/37.....	155.32	
9/1/37.....	155.32	
10/1/37.....	97.02	
10/1/37.....	58.30	
11/2/37.....	155.32	
12/2/37.....	155.32	
1/4/38.....	155.32	
2/2/38.....	155.32	
3/8/38.....	155.32	
4/6/38.....	155.32	
5/4/38.....	155.32	
7/14/38.....	155.32	
8/27/38.....	155.32	
9/28/38.....	155.32	
12/1/38.....	155.52	
	<hr/>	2,330.00

Unpaid Balance of total loan or  
face of note.....

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\$2,330.00

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Rebate of interest paid to Defendant.....

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## APPELLANT'S EXHIBIT 36

Payments in cash made by the Defendant and applied to notes in evidence and being a part of and included in the payments tabulated in the exhibits attached to each note but not in addition to any of such payments.

	Payment made by Check	Total Cash Paid	Total Amount Paid
1935	Mar. 21	\$1,000.00	
	Mar. 27	1019.26	
	Apr. 23	1,397.88	
	Apr. 30	543.72	
	May 21	1,000.00	
	May 27	863.94	
	Dec. 31	1,864.04	\$ 7,688.84
<hr/>			
1936	Sept. 4	18.16	
	Sept. 29	330.80	
	Oct. 30	330.00	
	Dec. 1	330.00	\$ 1,008.96
<hr/>			
1937	Jan. 8	330.00	
	Feb. 9	330.00	
	Mar. 9	330.00	
	Apr. 9	330.00	
	May 28	330.00	
	June 29	795.76	
	July 30	562.98	
	Aug. 31	640.64	
	Sept. 28	485.32	
	Sept. 30	155.32	
	Oct. 29	640.64	
	Nov. 30	640.64	
	Dec. 31	795.96	\$ 6,367.26
<hr/>			
1938			\$11,824.66
			\$26,890.12

R.J.O.B.

APPELLANT'S EXHIBIT 36-A

HILO FINANCE & THRIFT CO., LTD.

Note No. 614

Date of Note, 6/29/37. Date of Loan, 7/1/37.

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....		
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes due to		
H. F. & T. Co., Ltd.....	2,000.00	2,330.00

Payments received by Plaintiff:

Date	Amount
8/3/37.....	\$155.32
9/1/37.....	155.32
10/1/37.....	155.32
11/2/37.....	97.02
11/2/37.....	58.30
12/2/37.....	155.32
1/4/38.....	155.32
2/2/38.....	155.32
3/8/38.....	155.32
4/6/38.....	155.32
5/4/38.....	155.32
7/14/38.....	155.32
8/27/38.....	155.32
9/28/38.....	155.32
12/1/38.....	155.32
12/1/38.....	155.52

2,330.00

Unpaid Balance of total loan or  
face of note.....

\$2,330.00

Rebate of interest paid to Defendant.....

## DEFENDANT'S EXHIBIT 37

[Letterhead: Tennent, Greaney &amp; Wallace]

December 26, 1935.

Mr. George B. Carey,  
White Sewing Machine Agency,  
Honolulu, Hawaii.

Dear Mr. Carey:

I understand that due to Mr. Howard's illness and the fact that some of your Hilo salesmen are in Honolulu over the holidays, sales in Hilo have fallen off the last month or two. I also understand that the situation will be remedied in January when additional salesmen will be sent to Hilo, and the Hilo business pushed forward to make up for the deficiency in sales.

The arrangement with the Hilo Finance & Thrift Co., Ltd., is that you apply Hilo contracts as collateral against your borrowings. The Hilo Finance & Thrift Company is not interested in contracts from other islands, except that they have been willing to oblige you once or twice by accepting two or three of these contracts. However, I am informed that practically all of the contracts that you have sent down to cover the December loan are Honolulu contracts. It is my opinion that you should not have borrowed from Hilo this month, but should have made your payments there by sending over the requisite amount. I must ask you therefore to arrange



to withdraw these contracts within the next few days by repaying off all the Hilo loan, or at least that portion of it which is not covered by Hilo contracts. As a matter for the future, you should not borrow from the Hilo Finance & Thrift Company, Limited in excess of the amount necessary to finance Hilo sales.

I am sending a copy of this letter to the Hilo Finance & Thrift Company, Limited.

Very truly yours,

/s/ H. C. TENNENT.

HCT:H

## APPELLANT'S EXHIBIT 37-A

HILO FINANCE &amp; THRIFT CO., LTD.

Note No. 702

Date of Note, 7/30/37. Date of Loan, 7/30/37.

Total Loan or face of Note.....	\$1,165.00
Interest deducted in advance.....\$	165.00
Cash received by Defendant .....	1,000.00
Paid on notes to Realty Investment Co.....	
Credited to pre-existing notes due to H. F. & T. Co., Ltd.....	1,165.00

## Payments received by Plaintiff:

Date	Amount
9/1/37.....	\$ 77.66
10/1/37.....	77.66
11/2/37.....	77.66
12/2/37.....	19.36
12/2/37.....	58.30
1/4/38.....	77.66
2/2/38.....	77.66
3/8/38.....	77.66
4/6/38.....	77.66
5/4/38.....	77.66
7/14/38.....	77.66
8/27/38.....	77.66
9/28/38.....	77.66
12/1/38.....	77.66
12/1/38.....	77.66
12/31/38.....	77.66

1,165.00

Unpaid Balance of total loan or  
face of note.....

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\$1,165.00

Rebate of interest paid to Defendant.....

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## DEFENDANT'S EXHIBIT 38

[Letterhead: Hilo Finance &amp; Thrift Co., Ltd.]

September 5, 1936.

White Sewing Machine Agency,  
1112 Bethel Street,  
Honolulu, T. H.

Gentlemen:

Under date of August 29th we wrote you re shortage of \$19.16 in your payments for the month of August, and also that we had made no deduction on your note of August 7th.

Assuming that you will not be making settlement until the end of the month, we will require a check for \$348.96 in addition to your note for \$2,330.00, or a total of \$2,678.96 made up as follows:

15 Notes at \$155.32.....	\$2,329.80
Short in August payment.....	19.16
Interest & fees.....	330.00
	<hr/>
	\$2,678.96
	<hr/>

Yours very truly,

Hilo Finance &amp; Thrift Co., Ltd.

By /s/ ROBT. S. MOIR,  
Accountant.

RSM:RFA

## APPELLANT'S EXHIBIT 38-A

HILO FINANCE &amp; THRIFT CO., LTD.

Note No. 712

Date of Note, 8/3/37. Date of Loan, 8/3/37

Total Loan or face of Note.....		\$2,330.00
Interest deducted in advance.....	\$ 330.00	
Cash received by Defendant.....		
Paid on notes to Realty Investment Co.....		
Credited to pre-existing notes due to		
H. F. & T. Co., Ltd.....	2,000.00	2,330.00

## Payments received by Plaintiff:

Date	Amount	
9/1/37.....	\$155.32	
10/1/37.....	155.32	
11/2/37.....	155.32	
12/2/37.....	155.32	
1/4/38.....	19.56	
1/4/38.....	135.76	
2/2/38.....	155.32	
3/8/38.....	155.32	
4/6/38.....	155.32	
5/4/38.....	155.32	
7/14/38.....	155.32	
8/27/38.....	155.32	
9/28/38.....	155.32	
9/28/38.....	155.32	
12/1/38.....	155.32	
12/31/38.....	155.32	
12/31/38.....	155.52	
		\$2,330.00
Unpaid Balance of total loan or		
face of note.....		
		\$2,330.00
Rebate of interest paid to Defendant.....		

PLAINTIFF'S EXHIBIT M

In the Circuit Court of the Fourth Judicial Circuit  
Territory of Hawaii

L. No. 2316

HILO FINANCE AND THRIFT COMPANY,  
LIMITED,

Plaintiff,

vs.

GEORGE B. CAREY,

Defendant,

and

BANK OF HAWAII and BISHOP NATIONAL  
BANK OF HAWAII AT HONOLULU,  
Garnishees.

DEPOSITION OF WILFORD W. KING

taken on behalf of the plaintiff herein, pursuant to the stipulation for the taking of depositions without commission dated June 1st, 1940, and attached to this deposition, this deposition being taken before Mr. Norman M. Olds, a Clerk of the Circuit Court of the First Judicial Circuit, in the court room of the Fifth Judge of the First Circuit Court, Honolulu, T. H., on Thursday, June 13, 1940, starting at 10 o'clock a.m.,

J. Russell Cades, Esq., of the firm of Messrs. Smith, Wild, Beebe & Cades, appearing at attorney for the plaintiff, and

Plaintiff's Exhibit M—(Continued)  
(Deposition of Wilford W. King.)

James M. Richmond, Esq., of the firm of Messrs. Anderson, Marx, Wreen & Jenks, appearing as attorney for the defendant,

Whereupon the following proceedings were had and deposition taken:

Mr. Cades: Before taking the deposition there are some matters that we would like the record to show have been stipulated and agreed to by counsel for the plaintiff and the defendant:

First, that the reporter shall write out the deposition and that the clerk shall attach his certificate thereto, attaching a certified copy of the stipulation for the taking of depositions without commission, which has been furnished to the reporter.

Second, that the parties waive the requirement that the deponent read over and sign the deposition, and,

Third, the parties agree that the deposition may remain open; that is, it is not necessary to seal the deposition and send it to the clerk of court there to be opened by the presiding judge, but the original copy may be presented to counsel for the plaintiff for use in the trial, when and if needed, and further

It is stipulated and agreed that both counsel will state any objection that they have to the form of questions presented, but it is understood that objections going to the materiality or competency of any evidence presented, either on direct or cross-



Plaintiff's Exhibit M—(Continued)  
examination, will be presented and may be disposed of at the trial, by the presiding judge.

Mr. Richmond: That is satisfactory, and that is my understanding of the stipulation.

WILFORD W. KING

called as a witness on behalf of the plaintiff, being duly sworn by the Clerk, testified as follows:

Direct Examination

By Mr. Cades:

Q. What is your name?

A. Wilford W. King.

Q. And what is your position?

A. Deputy bank examiner, Territory of Hawaii.

Q. And how long have you occupied that position?  
A. Since August 15, 1934.

Q. Continuously during that period?

A. That's right.

Q. Where did you receive your education?

A. In the schools at Salt Lake City, Utah.

Q. Will you state what training you had in the field of accountancy?

A. I have had considerable experience as public accountant; received my certified public accountant's degree in June of 1928 at Salt Lake City, Utah. In 1929 I received a certificate from the Territory of Hawaii by reciprocity.

Q. As a certified public accountant?

A. As a certified public accountant.

Plaintiff's Exhibit M—(Continued)  
(Deposition of Wilford W. King.)

Q. How long have you been in private practice as a C.P.A. in the Territory of Hawaii?

A. Eleven years. That is, including all my time. I have been a C.P.A. for eleven years here, but the last six years I have been in the Territorial service.

Q. But for five years before that you were in private practice as a C.P.A.?

A. That's right.

Q. And will you state whether during your incumbency as bank examiner you have had occasion to make a special study of the matter of the regulation of finance companies in the Territory of Hawaii?

A. I have made a very detailed study for two or three years of that subject.

Q. The bank examiner of the Territory of Hawaii is charged with the duty of administering the Money Lender's act, that is the act 154, S. L. 1933, and the Industrial Loan and Investment Act, that is Act 231 S. L. 1937. Will you state who in the bank examiner's office is directly charged with the administration of these two acts?

A. The deputy bank examiner is charged with the administration of those two acts, in this case being myself.

Q. And in the course of your administration of the acts you have the official custody of all of the books and records of the office having to do with the administration of the two acts that I have named?

A. That is true.

Plaintiff's Exhibit M—(Continued)  
(Deposition of Wilford W. King.)

Q. I show you here what purports to be a certified copy, being a photostatic copy of the application for—request to operate business of making loans, filed by Hilo Finance and Thrift Company, Limited, on July 20, 1933, and I will ask you whether this is a true copy of an excerpt from the records which are in your official custody?

A. It is.

Mr. Cades: For the record, I understand that counsel will stipulate that it is not necessary to present in this hearing the original application on file in the office, but that the photostatic copy may be used in lieu thereof, is that correct?

Mr. Richmond: That is correct.

Mr. Cades: I will ask that this photostatic copy be attached to the stipulation and deposition, and marked as an exhibit.

(Photostatic copy of document offered is marked by the Clerk: "Plaintiff's Exhibit A," attached to this deposition.)

Q. Then, according to the records, this application of Hilo Finance and Thrift Company, Limited, was filed in the office of the Treasurer of the Territory on July 20th, 1933? A. Yes.

Q. Can you tell me from your records, are you able to tell, whether such a request was granted to the Hilo Finance and Thrift Company, and, if so, when? Will you identify the book from which you are reading?

Plaintiff's Exhibit M—(Continued)  
(Deposition of Wilford W. King.)

A. This is a book in which licenses to be issued under the money lender's act to the various applicants are taken. It contains a stub and the license itself. When a license is issued the stub and the license is filled out, and the license detached from the stub. This record shows that on September 22, 1933, license Number 26 was issued to Hilo Finance and Thrift Company, Limited, to conduct a money lender's business at 125 Kamehameha Avenue, Hilo, Hawaii.

Q. Addressing your attention again to the records of your office, I will ask whether your records show whether an application was made by the Hilo Finance and Thrift Company, Limited, for a license to operate as an industrial loan and investment company under the provisions of Act 231, Session Laws of 1937?

A. Yes, the records indicate that a license, or that an application for a license to conduct an industrial loan and investment company business, was dated July 21, 1937, and received August the 2nd, 1937, in the Treasurer's office.

Q. The application was dated when?

A. The application was dated July 21, 1937, and it was received in the Treasurer's office on August the 2nd.

Q. Will you identify the record from which that application appears?

A. That is an application to the Treasurer of the Territory of Hawaii by the Hilo Finance and

Plaintiff's Exhibit M—(Continued)

(Deposition of Wilford W. King.)

Thrift Company, Limited, for a license to conduct an industrial loan and investment company business.

Q. And that record is contained in what, in a file?

A. Oh, is that what you want? Pardon me. This is contained in the file of industrial loan and investment applications, "A" to "I," in the office of the Treasurer of the Territory of Hawaii.

Q. And constitutes part of the official records of that office?

A. It constitutes part of the official records.

Mr. Cades: May it be stipulated that a photostatic copy of this application may be made and attached to this deposition and made a part thereof, and marked as an exhibit?

Mr. Richmond: Yes.

(Photostatic copy of record offered is marked by the Clerk: "Plaintiff's Exhibit B," attached to this deposition.)

Q. And will you state whether the license applied for was in fact granted, and just refer to the thing you are looking at so that it is of record?

A. According to the certificate book, in which is contained the licenses issued under the industrial loan and investment act, on August 2, 1937, license number 31 was granted the Hilo Finance and Thrift Company, Limited, to conduct an industrial loan and investment business at 196 Kamehameha Avenue, Hilo, Hawaii.

Plaintiff's Exhibit M—(Continued)  
(Deposition of Wilford W. King.)

Q. Now referring to the application for a license to operate a loan business, that is the 1933 license, under the statute, and under the requirements of your department, the applicant was required to disclose the charges that would be made for different classes of loans, is that correct?

A. That is correct.

Q. And I call specifically your attention to the portion of the application of the Hilo Finance and Thrift Company which reads as follows: "Interest of one per cent per month is charged on loans. For instance, on a one hundred dollar loan interest of ten dollars is deducted when the loan is made and the borrower receives ninety dollars. A one hundred dollar note is payable in ten monthly installments. As an incentive to pay on time a refund of 2.2 per cent is given on the actual money borrowed on all loans paid on time." I will ask you whether substantially all of the applications that were made to your department for the issuance of money lender's permits did or did not contain substantially similar charges for the making of loans?

A. They practically all did.

Q. Now looking again to the records of your office, will you state for the record approximately how many licenses were issued under the 1933 act?

A. Eighty.

Q. Eighty licenses were issued?

A. Yes, that's right.

Q. When it came to making applications under



Plaintiff's Exhibit M—(Continued)

(Deposition of Wilford W. King.)

the 1937 act were the applicants required, either by law or by the regulations of your department, to disclose the rates that they were going to charge?

A. No, the rates were set forth in the law, under the 1937 act.

Q. And your department did not require the filing of statements of rate charges in the application?

A. There is no request for a statement of rates in the application under the 1937 act.

Q. Will you state whether or not substantially all of the licensees under the 1933 act applied for and received licenses under the 1937 act?

A. Most of them did; some did not.

Q. Most of them did, some did not, and the few that did not retired from business?

A. That's right.

Q. Now in regards to these acts, in accordance with the requirements of the 1933 act and the 1937 act, will you state whether your department did, in fact, make periodic investigations of the licensees to ascertain whether they were complying with the law?

A. We did, under both acts.

Q. Under both acts?           A. Yes.

Q. Were those examinations made regularly?

A. Well, under the statute—I might explain it this way: Under the statute we were required to make them at least once a year. However, with the small staff we had at the time, or have even now, and the amount of work that we have to do, it has

## Plaintiff's Exhibit M—(Continued)

(Deposition of Wilford W. King.)

not permitted us to get around regularly. It may be one year or two years before we get back to the same institutions in the meantime.

Q. Well, do your records show whether investigations were in fact made of the business of the Hilo Finance and Thrift Company during the periods from 1934 to 1938?

A. Our records show that we made an investigation in 1935 and after the one in 1935 we made the next one in 1938, and the next one in 1939.

Q. Do you have the actual time of those investigations there?

A. No, I do not have that. I can get them, however.

Q. Will you state whether you are familiar with the construction of this phrase in the provisions of Section 4, Act 154, Session Laws of 1933, which reads as follows: "And to deduct interest therefor in advance at the rate of one per cent per month or less, and in addition may receive and require uniform weekly or monthly installments?"

A. I am familiar with that.

Q. Will you state whether both from your personal knowledge and your practical knowledge whether that construction was uniform and made public?

A. Our construction was uniform. It was made public to the extent that reports were made to the associations or the licensees examined, of our examination. Our records, as such, are not public documents.

Plaintiff's Exhibit M—(Continued)

(Deposition of Wilford W. King.)

Q. But your construction was made known to any person that was interested in finding out what the construction was? A. That is true.

Q. Will you state what the construction given to those words by your department was?

A. Probably the best way to explain it would be by an example. The law permitted them to deduct interest in advance at the rate of one per cent per month. If an individual went into a licensee and wanted to borrow one hundred dollars, our interpretation was, if you wanted to borrow one hundred dollars for ten months, that the licensee could deduct one per cent of one hundred dollars—or ten per cent of one hundred dollars, being one per cent per month for ten months, or a total of ten per cent, and being deducted in advance, and the borrower would receive ninety dollars.

Q. And then the borrower would pay back?

A. That's true.

Q. At what rate?

A. The law permitted uniform weekly or monthly installments, so that the installments paid back would have to be equal in amounts. In the case that I mentioned the payments would be ten dollars per month to be returned.

Q. And will you state whether the interpretation given by your department was the same under the 1937 act as under the 1933 act?

A. Exactly the same.

Plaintiff's Exhibit M—(Continued)  
(Deposition of Wilford W. King.)

Q. And that construction by your department was likewise consistent at all times?

A. It has been consistent during my time there.

Q. And made public to the same extent as your construction of the 1933 act?

A. Yes, that is correct.

Q. Well, may I ask you, under the administrative construction of the act, as applied by your department, what would be the permitted charges in the following case: A borrower requests a loan of \$2,330, out of which he agrees to pay the lender interest at the maximum rate allowed by the statute, in advance. The loan is to be for a period of fifteen months. Would you state what was the maximum amount that could be deducted from that loan?

A. Fifteen per cent of the loan.

Q. Fifteen per cent of \$2,330?

A. Yes, \$349.50.

Q. That is, under the administrative construction of the act a licensee was permitted to deduct \$349.50 from the face amount of that note and pay to the borrower what amount?

A. Pay \$1,980.50

Q. And then in addition thereto, under your administrative construction, the operator would be required to repay the \$2320 note in fifteen equal installments?

A. That is correct.

Q. Monthly?

A. That's right.

Q. At the time that the 1937 act, and whenever I refer to the 1937 act I mean act 231 of the Session Laws of 1937, being the industrial loan and

Plaintiff's Exhibit M—(Continued)

(Deposition of Wilford W. King.)

investment act, was being considered by the legislature of the Territory of Hawaii, will you state whether or not substantially all of the licensees under the 1933 act were in fact making charges in the manner that you have outlined as being the construction of the statute by your department?

A. There were very, very few, a matter of five or six, who were not making such charges.

Q. What was the construction of your department with regard to loans that exceeded eighteen or twenty months, the periodic installments to be paid?

A. Well, from my research on the mainland for over a couple of years, I learned that most laws limited the length of time a loan may be made for to between fifteen months and twenty-four months, and that the average was around eighteen months. We took the position of advising lenders that it was not the intent of the law to permit them to make a loan for many years and deduct the interest in advance, but it had to be or should be kept within a range of between eighteen months and two years.

A. And did you embody that in a regulation of your department, or was that merely suggestive?

A. That was merely suggestive.

Q. You did, however, have strict regulations about the installments being equal?

A. That's right. One of the points that we al-



## Plaintiff's Exhibit M—(Continued)

(Deposition of Wilford W. King.)

ways looked for in our examinations was what we call balloon payments. That is to say, a loan was made for, say, six months; a loan was made for six months. However, the payments for the first five months were, say, fifty dollars, and the last payment would be, say, \$300. We call that \$300, payment a balloon payment, and it was used by unscrupulous money lenders to force the borrower to renew and thereby get additional charges where there is an investigation fee permitted, so that we, under the 1933 act, as well as under the present act, watch out for balloon payments, and require uniform payments.

Q. Now during the period from 1933 to 1937 considerable data was compiled by your office with regard to the condition of financial institutions in the Territory of Hawaii, isn't that correct?

A. That is correct.

Q. And will you state, in your own words, what was done by your department with reference to bringing before the Legislature of the Territory of Hawaii in 1937 the data concerning the condition of the financial institutions, and particularly finance companies?

A. We studied for about two years the money lenders' situation in the Islands, as it compared with the laws and regulations in effect in other jurisdictions throughout the United States. During that time, or at least on two occasions, I attended national conventions of the national con-



## Plaintiff's Exhibit M—(Continued)

(Deposition of Wilford W. King.)

ferences of Small Loan Supervisors, which is a national association of all state supervisors of small loan and finance companies. At those conventions all matters in regard to interest, and the methods of computing and so forth, are always discussed at some length. I remember distinctly of going to Indiana, where they have a very up-to-date finance company law; Wisconsin, Minnesota, Massachusetts, New York, Virginia, and other states, where I had definite, direct contact with the commissioners involved on the operations of the laws and the pitfalls in the laws, and the ways that money lenders get around the laws, and I had extensive discussions, and received a very great help from the Russell Sage Foundation, Mr. Ralph Nugent, director of the department of remedial laws, whose department had to do with the study of making loans, and costs and interest charges involved, throughout the United States, for a number of years. I came back and drafted in 1936 a proposed industrial loan investment act, patterned a good deal after the Indiana law. After being put into legal form by the attorney general it was presented as an administration bill to the 1937 legislature.

Q. Can you state of your own knowledge whether at the time of the consideration of the 1937 statute the Legislature,—the legislative committee of the Legislature, had before them complete data as to the manner in which the different existing licensees were conducting their business?

Plaintiff's Exhibit M—(Continued)  
(Deposition of Wilford W. King.)

A. They did. Prior to the Legislature meeting, Mr. McGonagle and myself took up a campaign to correct the situation, and we both gave a talk at the Rotary Club one day in which we outlined the rates of charge which had been charged under the 1933 act; it ranged all the way from forty per cent a year up to as high as 1200 per cent a year, the actual effective rate of interest, based on the loans made and the length of time the person, or the operators, had the money. We gave that information in the exact form that we had given it to the Rotary Club, to the legislative committees involved.

Q. Will you identify Mr. McGonagle?

A. Mr. McGonagle is treasurer of the Territory, and Bank Examiner ex-officio.

Q. Now in presenting the matter to the Legislature, was it the recommendation of your department that a definite limitation be put on the number of months?

Mr. Richmond: I think I will object to that as being leading.

Mr. Cades: I will withdraw that.

Q. Will you state whether or not your department made recommendations to the legislative committees with reference to the number of months for loans made by finance companies?

A. I don't recall at this time whether we did or not. However, I might say this, we, at the same time as we presented to the legislature an industrial

## Plaintiff's Exhibit M—(Continued)

(Deposition of Wilford W. King.)

loan act, we presented a small loan act, and in that act there is a restriction that no contract for loans shall be entered into for a period of longer than twenty months. I have in mind that we did recommend it, but it was not accepted.

Q. Would you mind clarifying, for the purposes of the record, that statement you made about the high effective rates under the existing law? What was the attitude of your department about those high effective rates?

A. Well, under the 1933 act the law permitted one per cent a month in advance, and in addition provided that the licensee could charge for a loan made pursuant to this section a fee of two dollars or less on loans under one hundred dollars. With the applications for licenses under the money lenders' act of 1933, the proposed licensees were required to file a chart of their charges, in addition to the interest rate they were to charge, and they were permitted to charge up to two dollars on one hundred dollars. We found that they were making loans, say, for ten dollars to an individual, for two or three days, and charging him a two dollar fee. He would come back to pay it, and a couple of days later get another ten dollar loan, and they would charge him, again, another two dollars for the fee, and he would come back in time and pay that and get another loan, so that in a month they could get large amounts of money for the use of a small amount of money, so that taking those

## Plaintiff's Exhibit M—(Continued)

(Deposition of Wilford W. King.)

amounts which it actually cost the borrowers, the interest charged and the investigation fee, and computing that to an effective rate of interest, based on the amount of money used and the time involved, the rates ran from forty per cent up to 1200 per cent.

Let me say this, in addition, that a good many of the licensees did not charge interest. A good many stated in their charts that they did not charge interest for loans under fifteen days. That was only a catch-all. If the people made a loan over fifteen days they could charge them an investigation fee, and would not have to worry about the interest.

Q. Then the abuses you were referring to, that you were particularly interested in remedying, was the abuse of the fee charged for an investigation for small loans, is that correct?

A. That's true.

Q. And that particular abuse was corrected to your satisfaction, to the satisfaction of your department, by the 1937 statute?

A. That's right.

Q. Now will you state, in your personal knowledge in the field, what the general sources are in the Territory of Hawaii for financial accommodation to business?

A. Well, the financial accommodations are about the same as they are in every other American community, namely, you first have your banks, trust

Plaintiff's Exhibit M—(Continued)

(Deposition of Wilford W. King.)

companies, your building and loan associations, your Morris Plan banks, and finance companies and small loan companies.

(Change in reporters.)

Mr. Cades: May the record show it is stipulated by counsel that the remainder of the deposition may be reported by Mr. Finley, and that he may join in the certificate and likewise counsel waive the requirement of reading the remainder of the deposition and the signature of deponent to the remainder of the deposition?

Mr. Richmond: That is correct.

Q. (By Mr. Cades): State in general what the differences were in the charges made for financial accommodation by the various types of institutions?

A. Banks were charging at that time between 6 and 9 per cent simple interest on reducing balances. Trust companies approximately the same. Building and loan associations were charging from 8 to 10 per cent simple interest on reducing balances. Industrial loan companies were charging 1 per cent per month, deducted in advance plus an investigation fee charge.

That was all the types that we have in the islands under the 1933 act.

Q. That was between 1933 and 1937?

A. That's right.



Plaintiff's Exhibit M—(Continued)  
(Deposition of Wilford W. King.)

Q. Then in 1937 a further type of finance institution was created?

A. That's true, that was known as the small-loan act, which covered loans up to \$300 and permitted an interest charge of  $3\frac{1}{2}$  per cent per month on the first hundred dollars,  $2\frac{1}{2}$  per cent per month on the next \$200, computed on outstanding balances, not deducted in advance.

Q. Can you state from your own knowledge whether or not the practice of deducting interest in advance is a common usage or practice in the business of finance companies?

A. It is definitely a policy, a practice.

Q. The term of deducting interest in advance in the finance-company field has a definite meaning?

A. It has.

Q. Is that meaning the same meaning that was attributed to the words by your department in the construction of the act?

A. It is.

Q. Are you able to state from your knowledge of the finance companies' business whether such companies could continue to exist in the territory of Hawaii with a charge of merely 1 per cent per month on the actual balances outstanding in the hands of the lender?

A. I do not believe that we would have one institution in that business in the territory, which was in the business for profit entirely.

Q. State why that is so?

A. Because the return on invested capital at a



Plaintiff's Exhibit M—(Continued)

(Deposition of Wilford W. King.)

rate that low would be very, very small and would not be attractive to capital. There might be institutions which would continue but they would be in my opinion semi-philanthropic; that is, they were in the business to assist the borrower.

Q. What has been the normal result in other jurisdictions where such institutions have not been able to charge in excess of 12 per cent through interest?

A. Now I don't understand that question. You refer to a rate. The rate you refer to is not a rate in existence in very many jurisdictions.

Q. In your opinion, having in mind the financial needs of the territory of Hawaii, is it an economic necessity that they have finance institutions, the type of which was licensed under the 1933 and 1937 acts?

A. Absolutely an economic need for the community.

Q. Will you state your reasons therefor?

A. My reasons are that the people who apply for assistance at such an institution are the type that do not have a credit standing, permitting them to obtain credit from banks or trust companies or building and loan associations. Therefore they have to go to some place where from the lender's standpoint the risk is a little higher than it would be if they had a credit standing.

A. Just one more question: will you state whether or not your department was instrumental

## Plaintiff's Exhibit M—(Continued)

(Deposition of Wilford W. King.)

in having adopted in the 1939 Legislature of the territory of Hawaii an amendment of the industrial loan and investment act for purposes of clarification?

A. Which section do you refer to, Mr. Cades?

Q. I refer particularly to the section of the 1939 act?

Mr. Richmond: I am going to object to that question as leading.

A. 5782 is the section.

Mr. Cades: I will reframe that question:

Q. Referring particularly to the provisions of section 6782-L, as amended by act 75, Session Laws, 1939, state whether your department took any steps in having such legislation adopted by the 1939 Legislature?

A. We sponsored the amendment to the 1939 legislature.

Q. And although this puts a limitation on the number of months for periodic loans, in general the 1939 act continues the construction that was adopted by your department over the period from 1933 to 1939?

A. That is true.

## Cross-Examination

By Mr. Richmond:

Q. Mr. King, you stated that your office put a construction on these sections in the 1933 and 1937 acts?

A. That is true.

Q. In placing a construction for administrative

Plaintiff's Exhibit M—(Continued)

(Deposition of Wilford W. King.)

purposes on those statutes, what did you try to do? Did you try to follow out what you thought the Legislature intended?

A. You are referring now to this specific statute?

Q. We can refer first to the 1933 act; I think that is section 7064? A. That's right.

Q. —in the revised laws?

A. Our interpretation was based upon our understanding of the words used or the phrases used in the law as we understood them, and since they were identical phrases or identical with the phrases in other statutes in other jurisdictions and we were familiar with what took place in those jurisdictions, we naturally felt that our interpretation was correct.

Q. As I say, you merely tried to carry out the words of the statute and nothing else?

A. That is true.

Q. Would you say that the purpose of section 7064 is substantially, in your administration you did look at this statute as intending to limit the amount of interest which loan companies might charge? A. That's right, that's right.

Q. What particular reference to the so-called balloon payments, did you have many occasions arise in which there were balloon payments made by—balloon charges, whatever you call them—made by loan companies?

A. I think we run across one or two occasionally, not very many, very seldom.

Plaintiff's Exhibit M—(Continued)  
(Deposition of Wilford W. King.)

Q. What did you do when you ran across a case of that sort?

A. We would simply criticize the procedure and refer to the law requiring uniform payments and see that they in the future corrected the situation; that they didn't make any more of those.

Q. In other words, under your construction of the law, if you had borrowed a hundred dollars, it would be unlawful to pay \$10 say 6 months hence and a hundred dollars at the end of the year—I mean \$90 at the end of the year?

A. It would not be unlawful to pay it, it would be unlawful for the person to receive it, the lender to receive it.

Q. It would be unlawful under this statute, that is your construction?

A. For the lender to require it, yes.

Q. Then you referred sometime ago to the effective rates of interest; you meant did you, the rate of interest on unpaid balances for the length of time the borrower had the money, is that what you mean by an effective rate of interest?

A. That is one way of saying it. The way I like to explain effective rate is the cost of the money borrowed over the length of time the money is held.

Q. Wouldn't it be true that in the case of balloon payment the rate of, effective rate of interest would be actually less than if he made uniform payments?      A. That is true.

Plaintiff's Exhibit M—(Continued)

(Deposition of Wilford W. King.)

Q. In your construction of the statute, why would you criticize that when you stated you felt this was to cover the interest rate, did you not?

A. Because we were particularly interested in this recurring investigation fee. The balloon payments were made purposely to get an additional investigation fee, and by getting an additional investigation fee periodically the effective rate of interest might materially go up in spite of that balloon payment. In other words——

Q. Leave that out of it, that isn't part of the question. I am just wondering why in the administration of this act you construed a practice which would result in a lower rate of interest as illegal under this statute. Did you do that?

A. Yes, they had to make them in uniform installments, the payments.

Q. Suppose there were no installments at all, would you have any objection to that, your department have any objection to that?

A. No, if a loan was made for a definite period, say 1 month, 2 months, and no installments, there would be no objection, no.

Q. Yet you distinguish between and your department, your department saw a difference between that situation under this statute and a situation where there were small installments and a large payment at the end?

A. That is true.

Q. You stated that you made investigations of the practices of these companies from time to time,

Plaintiff's Exhibit M—(Continued)  
(Deposition of Wilford W. King.)

not every year, not all cases, but just as often as you could, I take it?      A. That's right.

Q. Were you ever called upon to prosecute any violations of the act?      A. No, I was not.

Q. You didn't discover any violations of the act as you construed it?      A. That is true.

Q. What about these balloon payments, you said you found one or two of those?

A. In an examination, if we were able to find infractions of law it doesn't necessarily mean a prosecution of the affair in the courts. We always take the stand that we point out to people under our jurisdiction the violations and insist that they correct them.

Q. Then you did find violations from time to time?

A. We find violations from time to time. I don't recall at the present time any specific instances but I do recall discussing the matter of balloon payments with the various examiners, and instructing them to watch out for that type of thing.

Q. But you didn't find for example, anyone that was charging more than 1 per cent a month, deducted in advance, and requiring uniform weekly installments?      A. That's right.

Q. Then how was your construal of the statute made known to various loan companies?

A. By word of mouth mainly, of the examiners.

Q. You told them that was what you would permit?



Plaintiff's Exhibit M—(Continued)

(Deposition of Wilford W. King.)

A. Let me say this, that I wasn't on the job as bank examiner when that law became effective.

Q. Which law do you mean?

A. The 1933 law. Mr. Asch, my predecessor, was the one that instituted that or supervised that act when it first went into effect, and he had set down policies which were as I understand it, practically the same as we carried through. We made no material change in the policies when we took over the reins, as our construction of the law in that respect was apparently the same as Mr. Asch's had been.

Q. Did you ever run across any instances of loan companies stretching their loans out for 3 years or more?

A. Yes, I believe we did find a few cases where they have gone in excess of 2 years.

Q. What did you do in those cases?

A. We protested to them that we thought they were too long; that it wasn't the intent of the law to permit them to go on indefinitely, but there was apparently nothing we could do other than that as the law was silent on the subject.

Q. In other words, did you take the position that a long loan like that was a violation of this section?

A. No, we did not, we thought it was a violation of the intent of the law, but we could get no specific construction of the law which would say that they could not do it, so we could not stop it,

Plaintiff's Exhibit M—(Continued)  
(Deposition of Wilford W. King.)

but we did protest the loans being made in excess.

Q. You say you protested, you would have to, as an administrative officer, to quote them upon the law? A. That is true.

Mr. Cades: Object to that as argumentative.

Q. (By Mr. Richmond): Then I take it your construction, your office's construction of the statute is that there was no regulation as to the length of time of loans? A. That is true.

Q. You testified, Mr. King, that it was the normal practice for companies, finance companies in applying for licenses, to make a statement of how they were going to charge interest on loans?

A. Under the 1933 act it was required.

Q. Was required? A. Yes.

Q. By law? A. That is true.

Q. But wasn't required in 1937?

A. That's true.

Q. You say it was the general practice there both times, however, for the companies to make statements anyway, is that correct?

A. You mean under the 1933 act and the 1937 act they made statements to us?

Q. Under the 1933, you testified substantially all of the companies made such statements on their applications? A. Yes.

Q. Now in 1937 it was not required by law. What happened then if anything with respect to that?

A. The applications—with respect to the applications, Mr. Richmond?

Plaintiff's Exhibit M—(Continued)

(Deposition of Wilford W. King.)

Q. Yes? Did the companies make these statements in 1937 with respect to how they were going to charge interest? A. They did not.

Q. Now, Mr. King, on Oct. 21, 1938, the Supreme Court handed down a decision in a case entitled *Helbush v. Mitchell*. A. True.

Q. Are you familiar with that case?

A. I am not familiar, I read the decision, I am not familiar with the facts in the case.

Q. Yes, but you were in the department at the time that decision was handed down; you were then deputy bank examiner?

A. I was deputy bank examiner, I wasn't in the Territory at the time, however, I was on the mainland.

Q. You were on the mainland?

A. That's right.

Q. Do you know of your own knowledge whether the construction of these statutes was changed by your department following that decision?

A. The construction was not changed?

Q. In other words, you have previously testified on direct-examination that your department had construed section 7064 here and similar provisions in the 1937 act to mean that the company could deduct 1 percent 6 months in advance and then require repayment in equay monthly instalments, and if that were done that would not be a violation of the law?

A. Our construction under the 1937 act is the same as under the 1933 act.

Plaintiff's Exhibit M—(Continued)  
(Deposition of Wilford W. King.)

Q. Following the decision in *Helbush v. Mitchell*, did your department change its construction?

A. It did not.

Q. In other words, you did not state to any persons whose acts you investigated that if they were charging as they had previously done, they were now violating the law? A. I didn't.

Q. You know all of that of your personal knowledge? A. That's true, yes, sir.

Q. Was there any consideration given by your department to the effect of that decision, do you know that?

A. I read the decision and I do not agree with the method of computing interest in the decision.

Q. You didn't agree with the Supreme Court?

A. I didn't agree with the Supreme Court's method of computing interest. However, I am not acquainted with the facts of the case and do not know on what basis they arrived at a lot of their conclusions, but I do not agree with the method of computing interest.

Q. Did you understand that case to put a different construction on these statutes than your department had previously put?

A. Absolutely not.

Q. You understood it to be the same?

A. Pardon me?

Q. You understood the construction to be the same by the Supreme Court that you had previously adopted in your administrative practice?

A. No, I did not.

Plaintiff's Exhibit M—(Continued)

(Deposition of Wilford W. King.)

Q. You felt it was different?

A. Different, absolutely.

Q. But you did not change it?

A. I did not.

Q. To just recapitulate on one point here, I believe you testified that during your administration of the 1933 and 1937 acts, you didn't run across any violations of these sections?

A. Violation of my interpretation of the sections?

Q. Yes?

A. I don't remember testifying to that effect as definitely. We find violations all the time.

Q. In other words, you found people charging more than—I would like to state now I am not trying to mislead the witness here, I wasn't just sure on that point as to what you testified—were there any cases where more than 1 percent a month was charged?

A. Not to my knowledge.

Q. Not to your knowledge?                      A. Yes.

Q. Then your construction of the act amounted to stating from time to time to the various companies that they were not violating your construction of it in their present mode of business, is that correct?

A. Let me put the answer this way: that we make reports, written reports to the various licensees, calling their attention to violations of law, but not saying specifically "You have complied with

## Plaintiff's Exhibit M—(Continued)

(Deposition of Wilford W. King.)

this law and that law." Our policy is to call attention to violations and not to comment on the laws that are being correctly adhered to.

Q. In that event, when were there to be occasions arise for you to make known your construction of the act?

A. We discussed that on various occasions in connection with the application fees and investigation fees that were permitted. We felt they were being injurious, the way they were being handled was injurious to the people, to the extent excessive charges were being made, and discussed them when we were discussing a loan——

Q. Will you say discussing with whom?

A. Various licensees, for instance I might mention J. P. Medeiros, I remember distinctly he was quite irate on this investigation-fee charge and he came to see me several times and talked on the applicability of the law. I had discussions along that time with several of the licensees.

Q. Then you mean when you were discussing the question—what do you call the 2-dollar fee, what is your name for it?

A. Investigation fee.

Q. When you were discussing the question of the investigation fee with the licensees, you incidentally told them what your construction was of the act?

A. Our construction would come into the discussion, and again when we had occasion to consider balloon payments, uniform payments, it would come



Plaintiff's Exhibit M—(Continued)

(Deposition of Wilford W. King.)

into the discussion again. However, those occasions were not many. As I said before, the policy and interpretation had been set down by my predecessor.

Q. In what form did he set it down?

A. No form whatever; he made examinations and permitted the methods which all of the companies used, deducting 1 percent in advance to continue, with no record in the files that their procedure was not correct.

Q. In other words, you mean your predecessor merely did nothing about the existing conditions, is that what you mean?

A. In effect that would be it.

Q. And in following his lead then you merely did nothing about the situation, is that so?

A. I don't admit that, I didn't follow his lead, I tried to follow the law, and when I first went into the department I studied very thoroughly the laws we had to supervise, and in many ways our interpretation of the statutes are apparently different from those made by Mr. Asch, because we were called by various institutions on our interpretation, and were told Mr. Asch's interpretations were otherwise.

Q. I had reference to your statement that these policies had been set down by Mr. Asch and that you followed them?      A. No.

Q. You wish to correct that?

Mr. Cades: I object to the form of that question. I think the question presupposes something that was not in the evidence. The evidence was that on a particular construction of the statute with regard

Plaintiff's Exhibit M—(Continued)  
(Deposition of Wilford W. King.)

to charges of interest deducted in advance and periodic payments the construction of their department was consistent and uniform and had been adopted by his predecessor and had not been changed.

He said in other particulars points came up from time to time where the Asch construction was different from their construction, and it has no bearing on the case and presupposes something that has never been testified to and is objected to as to form.

Mr. Richmond: The witness testified on direct examination with respect to the publicity and of the construction made by his department of the statute and with respect to the manner in which it was made known to the moneylending fraternity and to the manner in which it might be available to the public at large.

Mr. Cades: Correct.

Mr. Richmond: My question is a proper question.

Mr. Cades: No, and on cross-examination he further testified that that construction had been already established by his predecessor. He has mentioned other constructions of the act on which he has not been specifically questioned, and I think the present question is unfair to the witness. However, that may be decided by the trial judge.

Mr. Richmond: I will reframe the question:

Q. I am now referring to the construction of your office with respect to the propriety under sec-

Plaintiff's Exhibit M—(Continued)

(Deposition of Wilford W. King.)

tion 7064 and the similar statute in 1937, the propriety of charging 1 percent a month in advance and requiring uniform weekly or monthly payments. I am not referring to any other constructions of any other part of this act, but just to that phraseology as it is affected here.

Now you state that your construction or rather that that construction was started by Mr. Asch?

A. I can't say that construction that I have—

Q. Yes?

A. —was started by Mr. Asch; I would say that it appears that the construction we have was also held by Mr. Asch, because the records do not indicate that exception was taken to the licensees operating in that manner, and they were all doing it.

Q. Now referring to this matter of construction alone, you know which part of the statute I am referring to. That construction then was made known to the moneylending fraternity how?

A. By my lack of challenging their procedure.

Q. And in any other way?

A. From time to time, as I told you before, in discussions with them in which the investigation fee was involved.

Mr. Richmond: That is all.

Redirect Examination

By Mr. Cades:

Q. Mr. King, you were asked whether it has been made known in any other way. Isn't it a fact

## Plaintiff's Exhibit M—(Continued)

(Deposition of Wilford W. King.)

that while you were in the bank examiner's office in 1937, that some 40 industrial-loan and business licenses were issued?      A. That is true.

Q. And at the time these licenses were issued, isn't it a fact that your department was fully informed about the rates they were charging?

A. That is true, by our investigations of their companies we knew their procedures.

Q. So that isn't it true that that was a fairly forceful way of making it known to them that your department construed the statute as they had been issuing licenses to them?

Mr. Richmond: I will object to that question.

A. I will answer the question in this way: that by our granting a license we approved the methods that they were using and the charges that they were using.

Q. State of your own knowledge whether the licensees, both under the 1933 act and the 1937 act did or did not rely on these licenses for their ability to make the charges?      A. I believe they did.

Q. State whether there are not a substantial number of persons in the territory of Hawaii not engaged in the lending business that do make isolated loans, is that correct or incorrect?

A. Will you read that question, please?

(Last question read as above recorded.)

A. According to information and reports coming to my office occasionally I believe it is correct.

Q. The persons who have applied for and re-

Plaintiff's Exhibit M—(Continued)

(Deposition of Wilford W. King.)

ceived business licenses have transacted a large number of loans, is that correct?

A. Considerable number of loans, that is true.

Q. Have you any idea of the amount of money in the period of a year that has been loaned by finance companies in reliance on licenses granted under the 1933 act and 1937 act?

A. I have computations in my office under the 1937 act, I don't believe I have under the 1933 act.

Q. Could you give some approximation of what they were, from memory?

A. I can state this: according to the annual reports during the last couple of years, the total assets, the very largest part of which are loans and installment contracts, and so forth, have been in excess of 6 millions of dollars.

Q. In excess of 6 millions of dollars, and you consider and can say that of your knowledge a substantial majority of those loans are or are not in excess of 12 percent computed on the outstanding balances?

A. I don't understand that question.

Mr. Cades: Would you mind reading it to see if it is clear?

(Last question read as above recorded.)

The Witness: I am still confused with that question.

Mr. Cades: I will reframe the question:

Q. Can you state of your own knowledge whether or not a substantial majority of the loans bear interest in excess of 1 percent per month on the out-



## Plaintiff's Exhibit M—(Continued)

(Deposition of Wilford W. King.)

standing balances due from the borrower to the lender?

A. I would say in excess of 90 percent are made on that basis.

Q. So that if the construction of your department, continued over a period of some 6 years, were to be determined to be improper, perhaps 90 percent of the loans of licensees under the moneylenders act, and licensees under the industrial-loan and investment act, would be usurious?

A. That is true.

LCF-1940-314-46.

/s/ WILFORD W. KING,

Subscribed and sworn to before me, this 19 day of June, A. D. 1940.

/s/ M. NORMAN OLDS,

Clerk, Circuit Court, First Judicial Circuit, Territory of Hawaii.

I, M. N. Olds, one of the Clerks of the Circuit Court, First Judicial Circuit, Territory of Hawaii, residing in Honolulu, do hereby certify that heretofore, to wit, on the 13th day of June, A.D. 1940, personally appeared before me, at the Judicial Bldg., in the City of Honolulu, Territory of Hawaii, Wilford W. King, a witness produced on behalf of plaintiff in a certain cause now pending and undetermined in the Circuit Court of the Fourth Judicial Circuit, Territory of Hawaii, wherein Hilo Finance & Thrift Co., Ltd., is plaintiff, George B. Carey, is defendant and Bank of Hawaii and Bishop



## Plaintiff's Exhibit M—(Continued)

(Deposition of Wilford W. King.)

National Bank of Hawaii at Honolulu are garnishees.

I Further certify that the said witness, Wilford W. King, was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by him was in my presence reduced to writing, in the presence of the said witness by means of shorthand and afterwards transcribed upon a typewriter, and the foregoing is a true and correct transcript of the testimony so given by him as aforesaid.

I further certify that after said testimony had been so transcribed it was read over by the said witness who then and there did subscribe and again make oath to the same.

I further certify that the taking of this deposition was in pursuance of stipulation hereto attached; and that there were present at the taking of this deposition Mr. J. Russell Cades for plaintiff and Mr. James M. Richmond for defendant.

I further certify that I am not counsel for nor in any way related to any of the parties to this suit nor am I any way interested in the outcome thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, this 19th day of June, A.D. 1940.

/s/ M. NORMAN OLDS,

Clerk, Circuit Court, First Judicial Circuit, Territory of Hawaii.

[Endorsed]: Received and filed in the Supreme Court July 21, 1944. Chas. H. K. Holt, clerk.

[Title of Court and Cause Omitted.]

## DECISION

Carlsmith & Carlsmith, Esquire, R. Cades, Esquire, Attorneys for Plaintiff.

W. C. Moore, Esquire, Cass & Silver, Esquire, Attorneys for Defendant.

On June 3, 1939, the plaintiff above named, instituted an action against the defendant to recover the sum of Five Thousand Four Hundred and Sixty-eight Dollars and Seventy-seven cents (\$5,468.77), together with interest, costs and attorneys' fees.

The complaint contained eight counts and alleged that the defendant, made, executed and delivered eight promissory notes to the plaintiff, each in the sum of twenty-three hundred and thirty (\$2330) Dollars. Copies of each note were attached to the complaint and made a part thereof. The complaint alleged that various sums were paid on account of the notes. These amounts are recorded on each of the attached copies of the notes. The amount sought to be recovered represents the total unpaid balance on each note, together with interest.

On June 24, 1939, the defendant filed a general denial to plaintiff's complaint and in addition thereto pleaded a set-off and counter-claim containing thirty-eight counts. The defendant's set-off and counter-claim alleged that during the period from April 10, 1934, to July 30, 1937, the defendant made, executed and delivered to plaintiff 38 promissory notes, 36 for the sum of \$2330, and the remain-

ing two for the sum of \$1155.00. The set-off and counter-claim alleges that each of the aforesaid notes were the result of an illegal and corrupt agreement whereby the plaintiff for the purpose of receiving a greater sum for the loan of its money than at the rate of one per cent per month, agreed to loan the defendant \$2000 for the period of fifteen months and defendant in consideration thereof delivered 35 notes for the sum of \$2350, payable in fifteen months. It further alleged that plaintiff loaned defendant an additional \$2000 and in consideration thereof, the defendant executed and delivered to the defendant the two notes for the sum of \$2350.

The defendant alleged that he paid plaintiff the sum of \$4564.44 in excess of one per cent per month on the notes referred to in the set-off and counter-claim and prayed this amount be set off against any judgment rendered for the plaintiff.

On July 11, 1939, the plaintiff filed a general denial to defendant's answer of set-off and counter-claim.

On June 21, 1943, plaintiff filed an amended declaration.

On June 22, 1943, the plaintiff amended his amended complaint of June 21, 1943, alleging that the plaintiff and defendant understood and agreed that the monthly installments would be due on the same day in each month that the advance was made. Plaintiff added eight counts to the declaration for the balance due on each of the notes for money had and received and prayed for judgment in the sum of \$4971.64.

On June 22, 1943, the defendant filed a demurrer to the amended complaint. The demurrer was overruled on June 23, 1943.

On June 23, 1943, the defendant filed a general denial to plaintiff's complaint and set up a counter-claim and set-off and prayed for judgment in the sum of \$7,188.28.

On June 23, 1943, the plaintiff filed a demurrer to defendant's set-off and counter-claim. The demurrer was sustained on June 23, 1943.

On June 24, 1943, the defendant filed an amended answer of general denial to plaintiff's amended declaration and pleaded a set-off and counter-claim and in support thereof alleged that on November 21, 1933, defendant entered into an oral financing agreement with plaintiff whereby plaintiff agreed to loan money on an open account on certain collateral security as needed by the defendant, the loans, as made, to be endorsed by promissory notes in the form attached as exhibits to the amended declaration; that about April 18, 1934, and thereafter, defendant did continuously borrow and replay loans to plaintiff upon an open account and executed notes for said sums so borrowed to a total of \$104,850.00 face value of notes executed for a total amount of cash received in the sum of \$17,973.32; that upon all loans so made there was charged by plaintiff against the defendant interest at a rate greater than two per cent per month which was included in the face value of each note so



executed; that defendant repaid plaintiff the entire principal sum of said loans on or before December 30, 1938, by paying plaintiff the total sum of \$23,161.94, of which sum \$6,188.62 was paid on the usurious interest charged.

The defendant gave notice that he would rely on the defenses of payment, lack of consideration, usury, illegality and fraud, and prayed for judgment of the sum of \$6,188.62, together with interest, costs and attorneys fees.

On June 24, 1943, the plaintiff filed a demurrer to defendant's amended answer upon the grounds: (1) That all sums of moneys demanded therein have been voluntarily paid by the defendant; (2) That a portion of the claim therein alleged is barred by the Statute of Limitations and; (3) That it affirmatively appears from the amended set-off and counter-claim that if defendant had any claim against the plaintiff, that the same is generally barred and is uncollectible under the Provisions of Act 75 of the Session Laws of 1939.

On June 26, 1943, the plaintiff filed an answer to defendant's set-off and counter-claim denying all the allegations therein and gave notice that it would rely on the defense of illegality, payment, statute of limitations and the provisions of Act 75 of the Session Laws of Hawaii 1939.

The plaintiff's evidence established that the defendant executed and delivered to the plaintiff the promissory notes described in the complaint. The amount remaining unpaid on the notes is undis-

puted. It is also admitted that the sum of \$330.00 was deducted from the principal of each note on account of interest at the time the loan was made.

The defendant contends that under the terms of the notes in question, the parties having contracted for a greater rate of interest than one per cent per month, the notes are therefore within the prohibition against usuary contained in Section 7055 Revised Laws of Hawaii 1935, as amended by Act 222 of the Session Laws of 1937 and therefore void.

In the case of *Henry W. Helbush v. Mitchell, Jr. et al*, 34 Hawaii 639, our Supreme Court held that where a contract requires the payment of an indebtedness with interest in equal periodic installments, each installment in the absence of language of the contrary is applicable, first to the satisfaction of all interest due, and if a surplus exists after such principal and the interest for the succeeding period is computable upon the balance of principal remaining after the application of the preceding installment.

In applying the foregoing rule to the notes in the case at bar, the effective rate of interest charged is in excess of two percent per month. This result is based upon the following figures:

If interest has been charged at the rate of one percent per month:



<u>MONTH</u>	<u>PRINCIPAL PAYMENT</u>	<u>UNPAID TRUE PRINCIPAL</u>	<u>INTEREST at 1%</u> <u>MONTHLY ON UNPAID</u> <u>TRUE PRINCIPAL.</u>
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5.32 Prin.	x 15 payments =	\$1999.80	\$330.00 Interest
2.00 Int.	x 15 payments =	<del>330.00</del>	-160.01
	TOTAL.....	\$2329.80	169.99 Excess



It follows that in accordance with the rule laid down in *Helbush v. Mitchell* above, the effective rate of interest charged in the notes under consideration is in the sum of 24.75 per cent per annum.

Subsequent to the decision in *Helbush v. Mitchell*, Act 75 of the Session Laws of Hawaii 1939, known as Industrial Loan Act, became law. Under this Act interest is chargeable and deductible from principal and calculated on the principal maximum of one per cent per month on total principal disregarding diminishing balance. It would be lawful under the provisions of this act to charge interest at the rate of \$23.30 per month on the notes in the case at bar. This would represent interest in the sum of \$349.50, while the actual charge on the notes in the case at bar is \$330.00. If calculated on the bases of the *Helbush* decision, this would amount to over twenty-six per cent per annum.

It is admitted that the plaintiff was duly licensed under Act 154 of the Session Laws of Hawaii 1933 and under Act 231 Series D-140 Session Laws of Hawaii, 1937, at the time the notes were executed.

The Industrial Loan Act in addition to setting out the method of calculating interest by licensees, repeals the defense of usury provided by Chapter 232 and particularly by Section 7053 of the Revised Laws of Hawaii 1935.

Section 2 of Section 6782X of the Industrial Loan Act provides as follows:

“Section 2. In so far as, and to the extent that, it lies within the power of the legislature

so to enact, it is hereby provided that the defense of usury provided by Chapter 232, and particularly by section 7053, of the Revised Laws of Hawaii 1935, shall not be available to any party in any action brought upon or arising out of any note or other contract to pay or secure the payment of money heretofore made or executed to any person, firm, association or corporation as the payee or obligee of such note or contract, which payee or obligee was duly licensed under Act 154 of the Session Laws of Hawaii 1933, or under Act 231, Series D-140, of the Session Laws of Hawaii 1937, at the time of the making of such note or other contract, if such note or contract provides for, and there has been collected thereon by such payee or obligee or the holder thereof no greater rate or amount of interest or other charges or both, than those that would have been permitted under this Act if it had been in force when such note or contract was made."

The defendant contends that the Legislature was without authority to repeal the defense of usury which existed at the time the notes in the case at bar were executed. This contention cannot be upheld.

Clear authority holds that the repeal of usury laws, without a saving clause operates retrospectively so as to cut off the defense for the future, even in actions upon contracts previously made.

In 6 R. C. L. 351, the following appears:

“It is now generally recognized that the Legislature may repeal a usury law, and that no one has any vested right to take advantage of such laws, nor does their repeal operate as an impairment of the obligation of contracts. Independent of the nature of the forfeiture as a penalty, which is taken away by a repeal of such a statute, the more general and deeper principle on which they are to be supported is, that the right of a defendant to avoid his contract is given to him by statute, for the purpose of its own, and not because it affects the merits of his obligations; and that, whatever the statute gives, under such circumstances, as long as it remains in fieri, and not realized, by having passed into a completed transaction, may by a subsequent statute be taken away. It is a privilege that belongs to the remedy, and forms no element in the right that inheres in the contract.”

In *Patterson v. Berry*, 125 Fed., p. 902, at p. 905, the Circuit Court of Appeals of the Ninth Circuit, uses the following language:

“It is well settled that the defense of usury, either to the principal of a contract debt or to the interest thereon, is in the nature of a penalty or forfeiture, which may be taken away by legislation, both as respects previous as well as subsequent contracts. This is sufficiently shown by the case of *Ewell v. Daggs*, 103, U. S. 143, 2 Sup. Ct. 408, 27 L. Ed. 682, but we add other references.”

In *Coe v. Muller*, 77 So. p. 88, at p. 90, the Supreme Court of Florida said:

“Usury being merely a statutory defense, not founded upon any common-law right, either legal or equitable, it is clearly within the power of the Legislature to take it away.”

In *Curtis v. Leavitt*, 15 N. Y. 9 Text 229, Mr. Justice Page said:

“The defense of usury is in the nature of a penalty or forfeiture and may at any time be taken away by the Legislature in respect to previous as well as subsequent contracts without treading upon any vested right.”

In *Jefferson Life Insurance Company, et al, v. Dattel*, the Circuit Court of Appeals of the Fifth Circuit (1936) said:

“A defense of or a forfeiture because of usury is not a vested right so long as it has not been established by judgment; so that usury laws can constitutionally be altered retroactively.”

In *Welch v. Wadsworth* (1861) 30 Conn. 149, 79 Am. Dec. 236, the Court said:

“Again, the Legislature may repeal a penal statute, and by the fact of repeal, unless there be some saving clause, all penalties fall, even if given to individuals, and suit has been brought and is pending for them. *Butler vs. Palmer* I. Hill, 324, *Smith’s Commentaries on Statutes and Constitutional Law* 892-896. The



parties to usurious contracts hold any right they can be presumed to hold to the penalties given by the law, subject to a modification or repeal by the Legislature which may destroy them and a consequent direct or indirect validation of their contracts.”

In *Ewell v. Daggs*, 108, U. S. p. 143, at p. 150, the Supreme Court of the United States held that a contract which a statute in Texas made void for usury is voidable only and a repeal of the statute that made contracts void, deprives the debtor of the statutory defense of usury.

The Court uses the following language:

“The effect of the usury statute of Texas was to enable the party sued to resist a recovery against him of the interest which he had contracted to pay, and it was, in its nature, a penal statute inflicting upon the lender a loss and forfeiture to that extent. Such has been the general, if not uniform, construction placed upon such statutes. And it has been quite as generally decided that the repeal of such laws, without a saving clause, operated retrospectively, so as to cut off the defense for the future, even in actions upon contracts previously made. And such laws, operating with that effect, have been upheld, as against all objections on the ground that they deprived parties of vested rights, or impaired the obligation of contracts. The very point was so decided in the following cases: *Curtis v. Leavitt*, 15 N. Y. 9;

Savings Bank v. Allen, 28 Conn. 97; Welch v. Wadsworth, 30 Conn. 149; Andrews v. Russell, 7 Blackf. 474; Wood v. Kennedy, 19 Ind. 68; Town of Danville v. Pace, 25 Grat. 1; Parmelee v. Lawrence, 48 Ill. 331; Woodruff v. Scruggs, 27 Ark. 26.

And these decisions rest upon solid ground. Independent of the nature of the forfeiture as a penalty, which is taken away by a repeal of the act, the more general and deeper principle on which they are to be supported is, that the right of a defendant to avoid his contract is given to him by statute, for purposes of its own, and not because it affects the merits of his obligation; and that whatever the statute gives, under such circumstances, as long as it remains in fieri, and not realized by having passed into a completed transaction, may, by a subsequent statute, be taken away. It is a privilege that belong to the remedy, and forms no element in the rights that inhere in the contract. The benefit which he has received as the consideration of the contract, which, contrary to law, he actually made, is just ground for imposing upon him, by subsequent legislation, the liability which he intended to incur. That principle has been repeatedly announced and acted upon by this court. Read v. Platts-mouth, 107 U. S. 568; and see Lewis v. McElvain, 16 Ohio, 347; Johnson v. Bentley, *Ib.* 97; Trustees v. McCaughy, 2 Ohio State, 152;

Satterlee v. Mathewson, 16 S. & R. 169; S. C. in error; 2 Pet. 380; Watson v. Mercer, 8 Pet. 88.

The right which the curative or repealing act takes away in such a case is the right in the party to avoid his contract, a naked legal right which it is usually unjust to insist upon, and which no constitutional provision was ever designed to protect. Cooley Constitutional Limitation, 378, and cases cited."

The next contention of the defendant is that he is entitled to setoff payments made to the plaintiff for interest above the legal rates upon notes that accrued prior to those in the case at bar.

This contention cannot be sustained. In *Carey v. The Discount Corporation*, 36 Haw. 107, our Supreme Court held that usurious interest voluntarily paid constituted a waiver of the defense of usury afforded by the Statute.

In addition to the foregoing authority, Section 7053 of the Revised Laws of Hawaii 1935, which authorizes the defense of usury, has no application to a licensee under the Industrial Loan Act passed by Act 75 of the Session Laws of 1939.

Counsel for the defendant also rely on the case of *Carey v. Discount Corporation*, 36 Haw. p. 107. In that case the court after stating that the Legislature made it clear by the language used in Section 7053, that it intended to save a contract which provided for a greater rate of interest than one per cent per month from being subject to the

general rule that a contract made in violation of a statute is void, contains the following dicta:

“Since it is admitted that the criminal usury statute has no application to the facts of this case, and since the criminal usury statute now prohibits the taking of more than one per cent per month for the loan of money and punishes the taking as a crime, thereby making applicable Section 8, Revised Laws of Hawaii 1935, which provides ‘Whatever is done in contravention of a prohibitory law is void, although the nullity be not formally directed, we have deemed it at least prudent to state that the decision in this case has no application to cases involving loan contracts which come within the prohibition of the criminal statute in force at the time the usurious interest was taken’.”

The Supreme Court of the United States, in *Ewell v. Daggs*, 108, U. S. 143, cited on page 8 of this opinion, had occasion to consider a point analogous to this under investigation. It arose in an action brought on a promissory note, the defense being usury. The Texas statute in force when the note was executed made all contracts in writing stipulating for a greater rate of interest, etc. Thereafter all usury laws were abolished by the Texas Constitution and the Legislature was forbidden from making laws limiting the parties to contract in the amount of interest they may agree upon for loans of money or other property. It was claimed by the appellant that, notwithstanding this

repeal of the usury laws, the rights of the parties are to determine according to the law in force at the time the transaction took place. The argument advanced was that the contract was void as to the entire interest. But it was held that the words "void and of no effect" were used in the sense of voidable "merely, that is, capable of being avoided"—and that they did not mean that the transaction was an absolute nullity, as though it never had existed, not capable of giving rise to any rights or obligations under any circumstances. "All that can be meant by the term," Justice Matthews said, "according to any legal usage, is that a court of law will not lend its aid to enforce the performance of a contract which appears to have been entered into by both the contracting parties for the express purpose of carrying into effect that which is prohibited by the law of the land. Broom's Legal Maxims, 732." The court also recognized the distinction between *mala in se* and *mala prohibita*, saying: "A distinction is made between acts which are *mala in se*, which are generally regarded as absolutely void, in the sense that no right or claim can be derived from them; and acts which are *mala prohibita*, which are void or voidable, according to the nature and effect of the act prohibited. *Fletcher v. Stone*, 3 Pick. 250. It was accordingly held in Massachusetts that a mortgage or assurance given on a usurious consideration, was only voidable, notwithstanding the strong words of the statute. *Green v. Kemp*, 13 Mass. 515. And in such cases, the advance of the money, although the contract is illegal for



usury, is a meritorious consideration, sufficient to support a subsequent liability or promise, when the positive bar of the statute has been removed." The statute was looked upon as, in effect, enabling the party sued to resist a recovery against him of the interest which he had agreed to pay; the court saying that the statute was penal in its nature, "inflicting upon the lender a loss and forfeiture to that extent."

The Supreme Court of Maine in *Holmes v. French* 68 Me. 525, has carefully pointed out the distinction in the effect of a statute which repeals one which declares usurious contracts void, and one which merely penalizes the usurer by giving the borrower the privilege of avoiding it by proper plea, as follows:

"Had this note been given under St. 1821, c. 19, which was in terms prohibitory, and declared that all contracts made in violation thereof 'shall be void,' there would be much force in the proposition, and reason as well as authority would sustain us in holding that the note would not be made valid by the mere repeal of the statute, the violation of which made it void. But St. 1821, c. 19, was very materially changed in 1834. St. 1834, c. 122. Its penal provisions were eliminated, so that when it became embodied in the revision of 1841 (R. S. 1841, c. 69, in force when the note in suit was made) it became remedial in its character. Chapter 69 fixed the legal rate of interest at 6 per cent, and provided two remedies in behalf of debtor



parties to contracts in which was reserved usurious interest, viz.: (1) In actions on such contracts, debtors could avoid the usurious portion by proving the usury under the general issue, and recover costs. (2) Whenever they had paid usurious interest, recover it back in an action commenced within one year after payment. *Tuxbury v. Abbot*, 59 Me. 466, 471. With the latter we now have nothing to do. The former is contingent upon the commencement of an action by the proper party. It is somewhat penal in its consequences; but the debtor cannot resort to it until he is put upon his defense by an action against him. So long as the remedy depends upon or is subject to this contingency, the right to resort to it is but inchoate at best. It is not founded upon the obligation of the contract, and is in no wise a vested right, unassailable under the Constitution. It is simply a remedy created by the statute, based upon what the legislature at the time considered the public good required; and the same authority, actuated by the same motives, recognized the change of circumstances which warranted their taking away what they had previously given, by a total abrogation of the statute which gave the remedy. This they had an undoubted right to do; and this they have done.—citing *Oriental Bank v. Freeze*, 18 Me. 109, 36 Am. Dec. 701.”

There seems to be little, if any, conflict in the authorities on the doctrine that where a usury statute does not declare the contract or any part of it void, but imposes a penalty or forfeiture of the whole or any part of the interest if the borrower sees fit to avail himself of the defense of usury, its repeal without a savings clause operates retrospectively so as to cut off the defense of usury for the future, even in actions upon contracts made while the law was in operation.

Our statute, Section 7055, which imposes a penalty for charging a rate of interest of more than one percent per month contains the language "except as otherwise permitted by law" any person who directly or indirectly receives any interest, etc., at a greater than one per cent per month shall be guilty of usury, etc. thus recognizing that some contracts which provide interest in excess of one per cent per month are not affected by this statute.

In view of the foregoing authorities, the Court is of the opinion that the Loan Act of 1939 is valid and that the plaintiff is entitled to recover judgment against the defendant, for the sum of \$4971.84, together with interest and costs.

Dated at Hilo, Hawaii, this 12 day of January,  
A. D., 1944.

[Seal]      /s/ RAY J. O'BRIEN,  
Judge.

[Endorsed]: Filed Jan. 12, 1944.

[Title of Circuit Court and Cause.]

### JUDGMENT

This cause coming on to be heard on the motion of the Plaintiff wherein it prays that judgment be entered herein against the Defendant, and it appearing by the record that the parties were at issue and came to trial before the Court without a jury, the same parties having waived a jury, and after said parties were fully heard and each had rested, thereafter, to-wit, on January 12, 1944, the written findings and decision of the Court were filed in said Court and cause, and the parties having been heard on a motion of judgment and for attorneys fees and for costs of Court, it is hereby

Ordered, Adjudged and Decreed that the Plaintiff have and recover from the Defendant the principal sum of \$4971.85 together with interest computed at the rate of 6% per annum from the date when each sum became due to the date hereof in the sum of \$1540.03; together with an attorneys fee of 10% of the principal and interest as allowed by the promissory notes, in the sum of \$651.19; together with costs of Court in the sum of \$24.00, or a total in the sum of \$7187.07.

Witness the Honorable Ray J. O'Brien, Judge of the said Court, on this 19th day of April, A. D. 1944.

[Seal]      /s/ A. S. CARVALHO,

Clerk of the Circuit Court  
of the Third Circuit.

[Endorsed]: Filed April 19, 1944.

In the Supreme Court of the Territory of Hawaii

October Term 1946

No. 2579

HILO FINANCE & THRIFT CO., LTD.

vs.

GEORE B. CAREY

EXCEPTIONS FROM CIRCUIT COURT,  
THIRD CIRCUIT, HON. R. J. O'BRIEN,  
JUDGE

o

Argued March 24, 1947. Decided April 11, 1947.  
Kemp, C. J., Peters and Le Baron, JJ.

Promissory notes; licensed money lenders or industrial loan and investment companies; principal amount of loan; interest thereon deducted in advance at rate of one per cent a month for period of note; principal required to be paid in fifteen equal monthly installments; authorized by statute.

A duly licensed money lender under Act 154 S. L. H. 1933 was, or a duly licensed industrial loan and investment company under Act 231 S. L. H. 1937 and under it as amended by Act 75 S. L. H. 1939 is, empowered and authorized by the respective Acts to deduct interest on the principal amount of a promissory note in advance at the rate of one per cent a month for the period of the note and at the same time require that principal be paid in fifteen equal monthly installments.

## OPINION OF THE COURT

By LE BARON, J.

Upon eight separate promissory notes, the plaintiff, as payee, after default of certain installments on and maturity of each note, brought in one suit an action against the defendant, as payer, to recover the aggregate amount on principal remaining unpaid. The terms of each note stipulate not only that the principal be paid in fifteen equal monthly installments, but that default of any installment renders the unpaid balance of principal due and payable. To this claim the defendant interposed the defense of usury and prayed for costs. He also filed a counterclaim for the total of the amounts of interest paid throughout the relationship of lender and borrower in excess of the total of the amounts of principal borrowed on the eight notes, the interest having been deducted in advance with respect not only to these present and partially satisfied notes but to thirty-eight prior and fully satisfied ones. The grounds of the counterclaim are that such interest on all forty-six notes is usurious and that they were executed on an open account pursuant to a corrupt agreement between the parties to circumvent the law pertaining to civil and criminal usury. Issue was joined and the causes were tried below jury waived. The trial judge by written decision allowed plaintiff's claim and disallowed defendant's counterclaim. Judgment was entered accordingly in favor of the plaintiff for the

unpaid principal together with costs and interest at six per cent on each installment from time of default.

The defendant excepted to the decision and judgment upon the ground that they are "contrary to the evidence and the law," citing twelve particulars thereof and reasons therefor. No useful purpose would be served here to set them forth. Suffice it to say that they are premised upon the assumption that the relationship of lender and borrower existing between the parties was a corrupt one at its inception and that usury tainted the loans made. In the absence of any dispute relative to the aggregate amount claimed to be unpaid on principal, the paramount question presented and upon which the efficacy of the appeal depends is not only whether the real intent of the parties was to evade the civil and criminal statutes on usury, but whether in making loans the parties actually violated any of such statutes, usury being purely a matter of statute in this jurisdiction.

Throughout the period covered by the claim and counterclaim, the plaintiff was a corporation engaged in the business of lending money and the defendant an individual engaged in selling sewing machines, the business of which necessitated the borrowing of money. In 1934, preliminary to entry into the relationship, the parties had an oral understanding that the defendant upon estimate of his business needs for money would, from time to time, apply for a loan when he had sufficient sale contracts of his customers to offer as collateral secur-



ity; that the plaintiff, if it accepted the application, would make the loan deducting interest in advance; that execution of contract would be upon plaintiff's printed form of installment promissory note; that plaintiff to accommodate defendant would extend the ordinary period of one year to that of fifteen months and agree to make substantial rebates of interest for prompt payment of the monthly principal installments. This understanding did not look forward to a single loan to be repaid by serial notes, nor did it regard prospective loans as one transaction or as a running or open account, but rather as distinct undertakings and different contracts to be settled and closed separately, each being one into which both parties would be free to enter. Hence it was not in the nature of a binding obligation, but merely served to make clear the plaintiff's usual business practice and clarify the conditions and terms upon which loans would be made severally or respective applications as accepted. At the time of understanding and during the period in which the first thirty-eight notes, as distinguished from the last eight of the forty-six, were executed, the plaintiff was a "money lender" within the meaning of and duly licensed under Act 154 of Sessions Laws of Hawaii 1933. (C. 233, §§ 7060-7068 R. L. H. 1935, repealed by § 2 of Act 231 S. L. H. 1937 which amended title XXIV of the Revised Laws of Hawaii 1935 by adding a new chapter thereto, i.e., c. 223-A, as well as forty-two new sections, the new chapter being amended by Act 75 S. L. H. 1939, now c. 170, §§ 8801-8827 R.

L. H. 1945.) Section 4(a) of Act 154, *supra* (§ 7064(1) R. L. H. 1935), expressly empowered such money lender "To loan money on personal security, or otherwise, and to deduct interest therefor in advance at the rate of one per cent per month, or less and, in addition, may receive and require uniform \* \* \* monthly installments." This plain and unambiguous grant of power speaks for itself and needs no judicial construction. The undisputed evidence shows that the oral understanding was in accordance with future exercise of that existing statutory power and constituted one ordinarily expected of prudent business men about to deal reciprocally. There is not a scintilla of evidence in the record tending to prove that the parties in contemplating loans intended to evade any provisions of the Act or any statute on usury. Consequently those particulars and reasons, alleged in support of the exceptions and assigning a corrupt agreement to commit usury, are untenable and without merit.

The next question is whether as a matter of law and fact any of the forty-six notes involved or combination thereof is usurious or violative of the statutes pertaining to usury. To determine this question it is first necessary to ascertain whether at the particular times of execution beginning with that of April 10, 1934, the date of the first note, and ending with that of March 8, 1938, the date of the last and forty-sixth (the others having been executed between those dates at approximately one month intervals), the plaintiff had statutory power

and authority to deduct interest in advance and require monthly installments of principal. As already indicated, when the first and fully satisfied thirty-eight notes were executed the plaintiff had such power and authority under section 4(a) of Act 154 of Session Laws of Hawaii 1933. Thereafter and before the last and partially satisfied eight notes were executed, this enactment was repealed by section 2 of Act 231 of Session Laws of Hawaii 1937, effective July 1, 1937. However, section 1 of Act 231, *supra*, adds *inter alia* a new section to title XXIV of the Revised Laws of Hawaii 1935. This new section is numbered 6782-N and grants to duly licensed industrial loan and investment companies the identical power which section 5(a) of Act 154, *supra*, granted to duly licensed money lenders. Thus in effect the addition of section 6782-N in conjunction with the passage of section 2 of Act 231, *supra*, operates to transfer that power from pre-existing licensed lenders to existing ones but does not change it. Nor was the transferred power subsequently altered by the amendatory enactment of Act 75 of Session Laws of Hawaii 1939 (see § 6782-L, 2(a)) in so far as it applied to the particular period and type of contracts represented by the last eight promissory notes of fifteen equal principal installments upon which notes the plaintiff brought suit after the effective date of such amending Act of 1939. Section 6782-N in granting this power speaks for itself with a force equal to the prior grant thereof by section 4(a), *supra*, and likewise requires no judicial construction. In plain and un-

ambiguous language it reads: "Interest on loans made by any industrial loan and investment company, subject to this chapter, may be deducted in advance at the rate of but not exceeding one per centum (1%) per month, and in addition, the company may require and receive \* \* \* monthly or other periodical installments \* \* \*." Before August 31, 1937, the date of the first of the partially satisfied and successively dated eight notes, and at all times thereafter the plaintiff had and was qualified as a duly licensed "industrial loan and investment company" and operated its business under Act 231, *supra*. Consequently at the particular times of execution relative to all the notes, the plaintiff had full statutory power and continuing authority to deduct interest on each loan in advance and at the same time require monthly installments of principal.

That this power and authority were properly exercised in making loans is demonstrated by the face of the notes and the undisputed evidence, the parties having stipulated to the following facts: that interest for each loan was deducted in advance and in addition the principal amount of each loan was required to be paid in fifteen equal monthly installments, the balance of loan after deduction of interest being either paid to the defendant or, as done in most instances, applied at his request to installment payments due on pre-existing notes; that the money loaned upon execution of each note was either in the principal amount of \$2330 or \$1165, the deducted interest on these amounts being

in the sum of \$330 and \$165, respectively. From such it is evident that the loans complied with the provisions of section 4(a) of Act 154, *supra*, and those of the new section 6782-N added by Act 231, *supra*, as well as with those of section 6782-L, 2(a), of the amendatory Act 75 of Session Laws of Hawaii 1939, provided that the deductions of interest did not exceed the limit fixed thereby, which is constant.

Corroborative of the undisputed evidence to the same effect, it is a mathematical certainty that interest at the rate of one per cent a month for fifteen months (the period of each note) on principal amounts of \$2330 and \$1165 would be \$349.50 and \$174.75, respectively. The interest on such loans, which in this case was actually deducted in advance in the respective amounts of \$330 and \$165, is therefore not usurious, it not being at a rate greater than one per cent per month, but rather at a lesser one. Nor do the number of separate and distinct notes executed, and the application at the defendant's request of part or most of the money loaned on subsequent notes to installments due upon antecedent notes, taint the aggregate or render any usurious, usury not depending upon the mere plurality of successive loans to a borrower or the use to which he puts his borrowings. Hence as a matter of law and fact none of the notes or combination thereof is infected with usury, nor is any violative of either the criminal or civil statutes on usury. Consequently the remaining particulars and reasons supporting the exceptions and assigning usury are untenable and without merit.



No usury having been proved, neither section 7053 of Revised Laws of Hawaii 1935 providing remedies to a borrower upon proof of usury in an action by the lender to recover on a usurious contract, nor respective statutes making the receipt of usury a crime, have any application. A fortiori sections 6782-W (2) and 6782-X (2), (3) and (4) of Act 75 of Session Laws of Hawaii 1939 are likewise inapplicable and hence the constitutionality thereof need not be considered. Such inapplicability is evidenced by subsection (2) of section 6782-W in relating to proof that a greater rate of interest was contracted for than permitted by the Act, which in this case would be the same as authorized by Acts 154 and 231, both *supra*; by subsections (2) and (3) of section 6782-X in making unavailable "the defense of usury provided by chapter 232 and particularly section 7053 of the Revised Laws of Hawaii 1935" to a borrower in an action on a note by a lender duly licensed under either Act 154 or Act 231, both *supra*, and by subsection (4) thereof in providing "that no action to recover any interest \* \* \* alleged to have been paid \* \* \* by any obligor under any note or other contract made on or after the effective date of Act 154 of the Session Laws of Hawaii 1933, and before the effective date of this Act, in excess of the interest \* \* \* legally chargeable or collectible under the law then in effect and applicable to the lender, shall lie or be instituted \* \* \* against any person, firm, association or corporation which was duly licensed under either said Act 154, or Act 231, Series D-140 of Session



Laws of Hawaii 1937, at the time such note or contract was made.”

In the absence of usury, neither the case of *Helbush v. Mitchell*, 34 Haw. 639, nor that of *Carey v. Discount Corporation*, 36 Haw. 107, has any application. This is apparent from the authoritative holding of each. In the former it is to the effect that usury existed upon a finding by the court that the lender as a matter of fact did not deduct interest in advance, but on the contrary required the indebtedness with interest to be paid in equal periodic installments, such facts showing that he did not do that which section 4(a) of Act 154, *supra*, authorized, which obviously rendered inapplicable its provisions governing computation of interest in advance on principal payable by installments. The holding in the latter is to the effect that usury voluntarily paid cannot be recovered, the question having been presented by exceptions to the sustaining below of demurrers to complaints which alleged payments of usurious interest.

For the reasons assigned herein the decision allowing plaintiff's claim and disallowing defendant's counterclaim and the judgment in favor of plaintiff are not contrary to either the law or the evidence.

Exceptions overruled.

/s/ S. B. KEMP,

/s/ LOUIS LE BARON.

J. R. Cades (Smith, Wild, Beebe & Cades and Carlsmith & Carlsmith on the brief) for plaintiff.

P. Cass (Cass & Silver on the briefs) for defendant.

## CONCURRING OPINION OF PETERS, J.

I concur in the result. I am in complete accord with the conclusion that the debtor-creditor relation existing between the parties to which the notes in question were the incidents was not corrupt or tainted with usury. But, in my opinion, the provisions of the 1933 and 1937 Acts in respect to the power to deduct interest in advance at the rate of one per cent per month, or less, and in addition to receive and require uniform weekly or monthly installments are not so clear and unambiguous as to justify jettisoning the immunizing provisions of the 1939 Act.

It is true that the *Helbush* case does not apply. We there expressly held that interest upon the promissory note involved had not been deducted in advance and in the absence of provisions in the 1933 Act fixing the legal rate of interest chargeable and the method of its computation the provisions of Revised Laws of Hawaii 1935, section 7053, applied to the former and the principles enunciated in the *Nawahi* case to the latter.

The mere admission of the parties in this case, however, that interest was physically deducted in advance at the respective times of the execution of the notes in question is not sufficient to remove the doubt that arises in my mind of efficacy of the language employed in both the 1933 and 1937 Acts in connection with the deductions of interest in advance to admit of the unqualified conclusion that the interest to be deducted is interest at the rate of one per cent per month for the duration of the loan

without credit for periodic installments paid by the obligor on account of principal. And it is unnecessary to decide that question for the reason that the immunizing provisions of the 1939 Act, under the facts of this case, deprive the defendant of the defense of usury and foreclose him from the recovery of the alleged usurious payments made by him on account of the notes subject to the counterclaim. I am content to rely for the determination of the issue in the instant case upon the provisions of the 1939 Act without speculating upon the legislative intention evinced by the language of the 1933 and 1937 Acts allowing deductions of interest in advance.

/s/ E. C. PETERS.

[Endorsed]: Filed April 11, 1947. Leoti V. Krone, Clerk Supreme Court.

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[Title of Supreme Court and Cause.]

### DECISION ON BILL OF EXCEPTIONS

Pursuant to the opinion of the above entitled Court, rendered and filed on the 11th day of April, 1947, in the above entitled cause, Defendant-Appellant's exceptions are overruled and the judgment of the Circuit Court of the Third Judicial Circuit is affirmed.

Dated at Honolulu, T. H., April 30, 1947.

[Seal]      /s/ LOUIS LE BARON,

Justice of the Above Entitled  
Court.

[Endorsed]: Filed April 30, 1947.

[Title of Court and Cause Omitted.]

### PETITION FOR REHEARING

Comes now George B. Carey, appellant herein, and petitions this Honorable Court for a rehearing of the decision decided on April 11, 1947, by this Honorable Court. The petition for rehearing is upon the following grounds:

1. That the Court in its decision does not decide the constitutional question raised by the appellant herein that the interest charged on those transactions was admittedly in excess of one per cent per month, computed upon the money actually received by the borrower for the period of time he actually had the use of the money, that such excessive interest was a criminal offense, both under the general usury law and under the statute regulating money lender, that Sec. 7 of the Revised Laws of Hawaii, 1945, provides that transactions in contravention of a prohibitory law is void and the transaction being within that class is void. It was beyond the constitutional power of the Legislature to create an agreement between these parties so declared void by subsequent enactment of law purporting to validate usurious transaction.

2. That this Court in the case of *Helbush vs. Mitchell*, cited herein, held that the true rule of computing interest under the statute of 1933 was that interest was to be computed upon the actual amount of money received by the borrower and upon the unpaid balances as they become due and

not upon the face value of the note itself, that the Court ignores this rule as set up in the *Helbush vs. Mitchell* case as establishing a rule for computing interest and declares that there is no usury in this case when the interest was computed upon the face of the notes and not upon the amount of money received by the borrower, and it was deducted in advance upon the total of the loan and not upon descending balances, contrary to the law as expressed in *Helbush vs. Mitchell* by this Court.

3. That the defense in this action as to the principal was a defense of payment in full of said principal by the debtor to the creditor and that the account having been fully paid in accordance with the statute in effect at the time of the conclusion of the period of payments, the Legislature is without power now or in 1939 to declare that transaction still in existence merely by reason of the existence of the notes themselves in the hands of the creditor, the notes being merely "evidence" of a debt and not the debt itself.

Dated: Honolulu, T. H., this 30th day of April, 1947.

Respectfully submitted,  
GEORGE B. CAREY.

By /s/ PHIL CASS,  
His Attorney.

[Endorsed]: Filed April 30, 1947. Leote V. Krone, Clerk, Supreme Court.

(Title Court and Cause Omitted.)

DECISION DENYING  
PETITION FOR REHEARING

Filed April 30, 1947. Decided May 1, 1947.

Kemp, C. J., Peters and Le Baron, JJ.

Per Curiam. The defendant petitions for a rehearing of the cause decided by this court in its opinion recorded on page 503 ante.

The stated grounds of his petition merely present questions which were fully briefed and argued by the parties and carefully considered by the court in its recorded opinion. They therefore do not constitute a sufficient basis upon which to entertain a rehearing.

Upon well-settled principles repeatedly enunciated by this court, the petition is denied without argument. P. Cass for the petition.

By the Court:

/s/ GUS K. SPROAT,  
Clerk.

Approved:

/s/ S. B. KEMP,  
Chief Justice.

/s/ E. C. PETERS,  
Associate Justice.

/s/ LOUIS LE BARON,  
Associate Justice.

[Endorsed]: Filed May 1, 1947. Gus K. Sproat,  
Clerk, Supreme Court.



In the Supreme Court of the  
Territory of Hawaii

No. 2579

GEORGE B. CAREY,

Petitioner,

vs.

HILO FINANCE & THRIFT CO., LTD.

Respondent.

PETITION FOR APPEAL

To the Honorable, the Chief Justice and Associate  
Justices of the Supreme Court of the Territory  
of Hawaii:

Comes now George B. Carey, Petitioner, by Brahan Houston, his Attorney, and deeming himself aggrieved by the judgment of this Court made and entered in the above entitled cause on April 30, 1947, pursuant to the Court's opinion filed on April 11, 1947, and the judgment of this Court entered May 1, 1947, denying his petition to Re-hear, prays that an appeal may be allowed from said judgments to the United States Circuit Court of Appeals for the Ninth Circuit under and according to the laws of the United States in that behalf made and provided; that an order be made fixing the amount of cost bond that said Petitioner shall give and that the Clerk of the Supreme Court of the Territory of Hawaii be directed to send to the United States Cir-

cuit Court of Appeals for the Ninth Circuit a transcript of the record, proceedings, documentary exhibits and papers duly authenticated.

In connection with this petition Petitioner herewith presents its Assignment of Errors, and states that said judgments were rendered in an action in assumpsit and that the amount involved, exclusive of interest and costs, exceeds \$5,000.00.

Dated at Honolulu, T. H., this 19th day of June, 1947.

/s/ BRAHAN HOUSTON,  
Attorney for Petitioner.

Territory of Hawaii,  
City and County of Honolulu—ss. .

Brahan Houston, being first duly sworn, on oath deposes and says: That he is attorney for George B. Carey, Petitioner named in the foregoing petition for an appeal from the Supreme Court of the Territory of Hawaii to the United States Circuit Court of Appeals for the Ninth Circuit;

That he has read the foregoing petition and knows the contents thereof and that the matters and things therein set forth are true of his own knowledge, and that the value in controversy, exclusive of interest and cost, exceeds \$5,000.00.

/s/ BRAHAN HOUSTON,

Subscribed and sworn to before me this 19th day of June, 1947.

[Seal] /s/ LEOTI V. KRONE,  
Clerk, Supreme Court,  
Territory of Hawaii.

Service of a copy of the foregoing petition for appeal is hereby admitted this 19th day of June, 1947.

SMITH, WILD, BEEBE  
AND CADES,

By /s/ J. RUSSELL CADES,  
Attorneys for Hilo Finance  
& Thrift Co., Ltd.

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in the office of the clerk of the Supreme Court, Territory of Hawaii.

[Seal]     /s/ LEOTI V. KRONE,  
Clerk, Supreme Court  
of Hawaii

Dated at Honolulu, T. H., June 19, A.D. 1947.

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[Title of Supreme Court and Cause.]

## ASSIGNMENT OF ERRORS

### Assignment No. 1

The Supreme Court of the Territory of Hawaii hereinafter referred to as the "Court" erred in making and entering its judgments on the 30th day of April, 1947 and on the 1st day of May, 1947 in the above entitled court and cause.

### Assignment No. 2

The Court erred in holding that appellant's continuous borrowing from appellee and his continuous paying to appellee of sums borrowed with interest

from April, 1934 to April, 1938 did not constitute an open or running account between the parties or an analogous transaction governed by the law applicable to open or running accounts.

#### Assignment No. 3

The Court erred in holding that the 46 notes executed by the appellant between April, 1934 and April, 1938 and payable to appellee, including the eight notes sued on, did not evidence and constitute an open or running account between the parties or an analogous transaction between the parties governed by the law applicable to open or running accounts.

#### Assignment No. 4

The Court erred in holding that the transaction between the parties as evidenced by the 46 notes executed by appellant between April, 1934 and April, 1938, and payable to Appellee and as further evidenced by the method of paying the first 38 of said notes was not violative of the statutes pertaining to usury.

#### Assignment No. 5

The court erred in calculating the interest paid by appellant on sums borrowed from appellee prior to the execution of the notes sued on and in failing to find that appellant had paid interest in excess of that allowed by law and in failing to apply said excess to the notes sued on.

## Assignment No. 6

The court erred in construing Act 154, Session Laws of Hawaii, 1933, and Act 231, Session Laws of Hawaii, 1937, so as to authorize appellee to charge interest in excess of 15% of the amount advanced to appellant for 15 months.

## Assignment No. 7

The court erred in construing Act 154, Session Laws of Hawaii, 1933, and Act 231, Session Laws of Hawaii, 1937, so as to authorize appellee to charge as interest 15% of the total of the amount actually advanced to appellant for 15 months plus an amount in excess of 15% thereof and to impose on appellant an obligation to pay the amount actually advanced plus 15% of said total sum and to deduct in advance the amount over and above the amount actually advanced, that is to say, the Court erred in holding that appellee was authorized to charge interest of 15% of the total of \$2000 plus 15% of \$2000, i. e., \$300 plus \$30—a total of \$330, the allowable interest as computed by the court being \$349.50.

## Assignment No. 8

The court erred in construing Act 154, Session Laws of Hawaii, 1933, and Act 231, Session Laws of Hawaii, 1937, so as to authorize money lenders operating thereunder to add to the amount actually advanced to the borrower for fifteen months an additional sum not in excess of the total of 15% thereof plus 15% of the amount advanced. That is

to say, the Court erred in construing said acts so as to authorize said money lenders to impose an obligation on borrowers in the case of a \$2000 advance for 15 months to pay \$2000 plus \$352.94, 15% of \$2352.94, being \$352.94 and to deduct \$352.94 in advance.

#### Assignment No. 9

The court erred in holding that no one of the 46 notes involved and no combination thereof is usurious or violative of the statutes pertaining to usury.

#### Assignment No. 10

The court erred in holding that the case of *Helbush v. Mitchell*, 34 Haw. 639 was not applicable to the instant case.

#### Assignment No. 11

The court erred in pretermittting the material constitutional question raised by the appellant herein that the interest charged on the transactions involved was in excess of one per cent per month, computed upon the money actually received by the borrower for the whole period of the loan or for the period of time he actually had the use of the money, that the taking of such excessive interest was a criminal offense, both under the general usury law and under the statute regulating money lender, that Sec. 7 of the Revised Laws of Hawaii, 1945, provides that transactions in contravention of a prohibitory law are void and the transaction being within that class is void; that it was beyond the constitutional power of the Legislature to create an agreement



between these parties so declared void by subsequent enactment of law purporting to validate transaction.

Assignment No. 12

The court erred in rendering judgment for the appellee on its amended complaint and on appellant's setoff and counterclaim.

Wherefore petitioner George B. Carey prays that the judgments of the Supreme Court of the Territory of Hawaii entered in the above entitled cause on the 30th day of April, 1947 and the 1st day of May, 1947 be reversed and for such other and further relief as may be proper.

/s/ BRAHAN HOUSTON,  
Attorney for Appellant.

Service of a copy hereof admitted 21 day of June, 1947.

SMITH, WILD, BEEBE  
& CADES,  
Attorneys for Appellee.

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in the office of the clerk of the Supreme Court, Territory of Hawaii.

Dated at Honolulu, T. H., June 19, A.D. 1947.

[Seal] /s/ LEOTI V. KRONE,  
Clerk, Supreme Court,  
Territory of Hawaii.

[Title of Supreme Court and Cause.]

COST BOND

Know All Men By These Presents:

That George B. Carey as principal and W. K. Richardson and Amy W. Richardson as sureties are held and firmly bound unto Hilo Finance and Thrift Company, Limited, Respondent, hereinafter called the appellee, in the sum of \$250.00 for the payment of which well and truly to be made we bind ourselves and our heirs and assigns jointly and severally and firmly by these presents.

The condition of this obligation is such that:

Whereas the above bounden principal, George B. Carey has filed his petition for appeal from the Supreme Court of the Territory of Hawaii to the United States Circuit Court of Appeal for the 9th Circuit to reverse the judgments of said Supreme Court entered April 30, 1947 and May 1, 1947.

Now, therefore if the said principal shall prosecute his appeal with effect and answer all cost, if he fails to sustain said appeal, then this obligation shall be void, otherwise it remains in full force and effect.

Sealed with our seals and dated, at Honolulu, T. H., June 19th, 1947.

/s/ GEORGE B. CAREY,  
Principal.

/s/ W. K. RICHARDSON,  
Surety.

/s/ AMY W. RICHARDSON,  
Surety.

Territory of Hawaii,  
City and County of Honolulu—ss.

W. K. Richardson and Amy W. Richardson being first duly sworn depose and say that they have executed the foregoing cost bond in the sum of \$250.00; that they have property situate within the Territory of Hawaii subject to execution and that taken together they are worth in such property the amount of the penalty specified in said bond, that is, \$250.00 over and above all of their debts and liabilities.

Dated at Honolulu this 19th day of June, 1947.

/s/ W. K. RICHARDSON,

/s/ AMY W. RICHARDSON.

Subscribed and sworn to before me this 17th day of June, 1947.

PEARL RICHARDSON,

Notary Public, First Judicial Circuit, Territory of Hawaii.

My Commission Expires May 27, 1949.

The foregoing bond is hereby approved as to form, amount, and sufficiency of sureties.

[Seal] /s/ SAMUEL B. KEMP,

Chief Justice, Supreme Court,  
Territory of Hawaii.

Service of copy of foregoing bond on appeal is hereby admitted.

Dated at Honolulu, this 21st day of June, 1947.

SMITH, WILD, BEEBE

AND CADES,

Attorney for Appellee.

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in the office of the clerk of the Supreme Court, Territory of Hawaii.

Dated at Honolulu, T. H., June 19, A.D. 1947.

[Seal]      /s/ LEOTI V. KRONE,  
Clerk, Supreme Court,  
Territory of Hawaii.

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[Title of Supreme Court and Cause.]

ORDER ALLOWING APPEAL AND  
FIXING AMOUNT OF BOND

Upon reading and filing in open court, the verified Petition of George B. Carey, Petitioner above named, in which he prays that an appeal may be allowed him from the judgments of this Court entered in the above entitled cause on April 30, 1947, and May 1, 1947, to the United States Circuit Court of Appeals for the Ninth Circuit, and upon said Petitioner filing an assignment of errors together with said petition for appeal together with a bond for costs in the sum of \$250.00,

It Is Hereby Ordered that said Appeal be and it is hereby allowed; that the bond for costs in the sum of \$250.00 filed by said George B. Carey, be and it is hereby approved; and that said petition for appeal, assignment of errors and bond for costs were filed in open court on the 19th day of June, 1947,

after the filing of said judgments; and this order is now made, and said appeal is allowed, all in open Court in the Supreme Court of the Territory of Hawaii.

Dated at Honolulu, T. H., this 19th day of June, 1947.

[Seal]     /s/ SAMUEL B. KEMP,  
Chief Justice of the Supreme Court of the Terri-  
tory of Hawaii.

Service of a copy of the foregoing Order allowing appeal and fixing cost bond is hereby admitted this 21st day of June, 1947.

SMITH, WILD, BEEBE

& CADES,

Attorneys for Appellee.

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in the office of the clerk of the Supreme Court, Territory of Hawaii.

Dated at Honolulu, T. H., June 19, A.D. 1947.

[Seal]     /s/ LEOTI V. KRONE,  
Clerk, Supreme Court,  
Territory of Hawaii.

[Title of Supreme Court and Cause.]

CITATION

The United States of America—ss.

The President of the United States of America to  
Hilo Finance and Thrift Company, Ltd., and  
to Its Attorneys, Smith, Wild, Beebe and  
Cades:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit at the City of San Francisco, State of California, within forty (40) days from the date of this Citation pursuant to an Appeal duly allowed and filed in open court by the Supreme Court of the Territory of Hawaii on the 19th day of June, 1947, in the above entitled cause, wherein George B. Carey is Appellant, and you, Hilo Finance & Thrift Co., Ltd., are Appellee, to show cause, if any, why the final judgments rendered against the said George B. Carey on April 30, 1947, and May 1, 1947, should not be corrected and why speedily justice should not be done to the parties in their behalf.

Witness the Honorable Samuel B. Kemp, Chief Justice of the Supreme Court of the Territory of Hawaii, this 19th day of June, 1947.

[Seal]      /s/ SAMUEL B. KEMP,  
Chief Justice,  
Supreme Court of the  
Territory of Hawaii.



Attest:

[Seal]

LEOTI V. KRONE,

Clerk Supreme Court of the  
Territory of Hawaii.

Service of a copy of the foregoing Citation is  
hereby admitted this 21st day of June, 1947.

HILO FINANCE & THRIFT  
COMPANY, LTD.

By SMITH, WILD, BEEBE  
AND CADES,

Its Attorneys.

By /s/ J. RUSSELL CADES.

I do hereby certify that the foregoing is a full,  
true and correct copy of the original on file in the  
office of the Clerk of the Supreme Court of the  
Territory of Hawaii.

Dated at Honolulu, T. H., June 19, A. D. 1947.

[Seal]

/s/ LEOTI V. KRONE,

Clerk, Supreme Court,  
Territory of Hawaii.

[Title of Supreme Court and Cause.]

## PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the Above Entitled Court:

: You will please prepare and certify a transcript of the record of the above entitled cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit upon the appeal heretofore allowed herein and include in said transcript the following:

1. The record on appeal from the Third Circuit Court, Territory of Hawaii, to the Supreme Court of the Territory of Hawaii except:

- a. Appellant's Exhibits 3 to 34, inclusive;
- b. Appellee's Exhibits A to H, inclusive;
- c. Words and figures on back side of each of the eight cards, being Appellee's Exhibit N;
- d. Pages 1 to 18, inclusive, of the transcript of evidence and the first eight lines of page 19 thereof;
- e. Bill of Exceptions;
- f. Minutes of Clerk of Trial Court.

2. Amended Complaint.

3. Answer to Amended Complaint, Set-off and Counter Claim.

4. Answer to Set-off and Counter Claim.

5. Decision of Trial Court.

6. Judgment of Trial Court.

7. Opening and Reply Briefs filed by Appellant in the Supreme Court of the Territory of Hawaii.

8. Opinion of the Supreme Court of the Territory of Hawaii.

9. Decision of Supreme Court on Bill of Exception.

10. Appellant's Petition to Re-hear.

11. Per Curiam of Supreme Court of Territory of Hawaii denying Appellant's Petition to Re-hear.

12. Petition for Appeal.

13. Order allowing Appeal.

14. Citation on Appeal.

15. Assignments of Error.

16. Bond for Costs on Appeal.

17. Clerk's Certification of the Transcript.

18. This Praecipe.

In preparing above items 2 to 16, inclusive, Clerk will omit Title of Court and Cause.

/s/ BRAHAN HOUSTON,

Attorney for Appellant.

Received a copy of the above Praecipe this the 25th day of July, 1947.

SMITH, WILD, BEEBE

AND CADES,

Attorneys for Appellee.

By /s/ J. RUSSELL CADES.

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in the office of the Clerk of the Supreme Court of the Territory of Hawaii.

Dated at Honolulu, T. H., July 25, A. D. 1947.

[Seal] /s/ LEOTI V. KRONE,

Clerk, Supreme Court,  
Territory of Hawaii.

[Title of Supreme Court and Cause.]

AMENDED PRAECIPE FOR TRANSCRIPT  
OF RECORD

To the Clerk of the Above Entitled Court:

You will please prepare and certify a transcript of the following exhibits contained in the record of the above entitled cause in addition to the items called for by the Praecipe heretofore filed:

1. Appellee's Exhibits A to H, inclusive.
2. Appellee's Exhibits I, J, K and L.

The following exhibits are not to be included in the transcript: Appellant's Exhibits 35, 39 and 40.

/s/ BRAHAN HOUSTON,  
Attorney for Appellant.

Received a copy of the above Amended Praecipe this the 31st day of July, 1947.

SMITH, WILD, BEEBE  
AND CADES,  
Attorneys for Appellee.

By /s/ J. RUSSELL CADES.

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in the office of the Clerk of the Supreme Court of the Territory of Hawaii.

Dated at Honolulu, T. H., Aug. 2, A. D. 1947.

[Seal] /s/ LEOTI V. KRONE,  
Clerk, Supreme Court,  
Territory of Hawaii.

[Title of Supreme Court and Cause.]

AMENDED PRAECIPE FOR TRANSCRIPT  
OF RECORD

To the Clerk of the Above Entitled Court:

You will please omit item No. 7, i.e., Opening and Reply Briefs filed by Appellant in the Supreme Court of the Territory of Hawaii, called for in the Praecipe heretofore filed herein from your transcript of the record in this cause.

/s/ BRAHAN HOUSTON,  
Attorney for Appellant.

Received a copy of the above Amended Praecipe this 7th day of August, 1947.

SMITH, WILD, BEEBE  
AND CADES.

Attorneys for Appellee

By /s/ J. RUSSELL CADES.

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in the office of the Clerk of the Supreme Court of the Territory of Hawaii.

Dated at Honolulu, T. H., Aug. 7, A. D. 1947.

[Seal] /s/ LEOTI V. KRONE,  
Clerk, Supreme Court,  
Territory of Hawaii.

[Title of Supreme Court and Cause.]

### ORDER EXTENDING TIME

Upon application by Petitioner, George B. Carey, supported by Affidavit hereto annexed and good reasons appearing:

It Is Ordered that the time for the filing of the record and docketing of the above entitled cause in the U. S. Circuit Court of Appeals for the Ninth Circuit upon said Petitioner's appeal be and the same is hereby extended to and including August 16, 1947.

Dated at Honolulu, T. H., this 25th day of July, 1947.

[Seal]     /s/ SAMUEL B. KEMP,  
Chief Justice.

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in the office of the Clerk of the Supreme Court of the Territory of Hawaii.

Dated at Honolulu, T. H., July 25, A. D. 1947.

[Seal]     /s/ LEOTI V. KRONE,  
Clerk, Supreme Court,  
Territory of Hawaii.

[Title of Supreme Court and Cause.]

### AFFIDAVIT

Brahan Houston, being duly sworn, deposes and says that he is counsel of record for George B. Carey, Petitioner in the above entitled cause; that the said George B. Carey has filed a Motion to extend time within which to certify the record in



this cause to the U. S. Circuit Court of Appeals for the Ninth Circuit on Appeal from the judgment of the above entitled court; that this Affidavit is filed in support of said Motion; that Affiant did not represent the said George B. Carey in the Trial Court nor in the Supreme Court; that he accepted employment after the judgment and the decision in the Supreme Court; that the record in the cause is voluminous; that the compilation thereof by affiant for purpose of appeal required much time in his familiarizing himself therewith; that the copying thereof by the Clerk required much time; that, although the record is now complete with the exception of an extensive Stipulation proposed to counsel for the Defendant for the purpose of abridging the record on appeal, counsel for Defendant will require time for the purpose of considering the same; that for these reasons the record on appeal cannot and will not be completed in time to file in the U. S. Court of Appeals for the Ninth Circuit by July 28, 1947, which is the last day for the filing of the record in said Court; that an extension of time to and including August 16, 1947, will be necessary to complete the record on appeal.

Dated at Honolulu, T. H., this 25th day of July, 1947.

BRAHAN HOUSTON

Subscribed and sworn to before me this 25th day of July, 1947.

/s/ FANNIE DANG,

Notary Public, First Judicial Circuit, Territory of Hawaii.

My commission expires April 3, 1948.

Dated at Honolulu, T. H., this 26th day of August, 1947.

/s/ BRAHAN HOUSTON,  
Attorney for Appellant.

Service of a copy of above acknowledged this the 26th day of August, 1947.

SMITH, WILD, BEEBE  
AND CADES,  
Attorneys for Appellee.

By /s/ J. RUSSELL CADES.

[Endorsed]: Filed Aug. 28, 1947.

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[Title of Circuit Court of Appeals and Cause.]

#### DESIGNATION OF RECORD FOR PRINTING

The appellant, George B. Carey through Brahan Houston, his attorney, designates the entire transcript of the record in this cause for printing.

Dated at Honolulu, T. H., this 26th day of August, 1947.

/s/ BRAHAN HOUSTON,  
Attorney for Appellant.

Service of a copy of above acknowledged this 26th day of August, 1947.

SMITH, WILD, BEEBE  
AND CADES,  
Attorneys for Appellee.

By /s/ J. RUSSELL CADES.

[Endorsed]: Filed Aug. 28, 1947.